This case concerned the time taken by the European Investment Bank (EIB) to deal with a complaint concerning the Castor project, an underground gas storage plant off the coast of Spain. The complaint was submitted to the EIB in November 2013 by a Spanish civil society organisation.

As the complainant had not yet received the EIB’s final decision by March 2017, it turned to the Ombudsman. The EIB adopted its final decision on the complaint in March 2018.

The Ombudsman found that the EIB failed to take a final decision on the complaint within a reasonable period of time. This was maladministration. As the Ombudsman recently made the appropriate recommendation to the EIB in the context of her inquiry in another case (146/2017/DR) raising similar issues, she closed this inquiry.

Background to the complaint

1. The Castor project, which gave rise to this complaint, aimed at converting an abandoned oilfield into a natural gas storage facility. In July 2013, the European Investment Bank (EIB) announced that it would support the project with financing of EUR 500 Million [1] . After the company carrying out the project (‘the promoter’) began injecting natural gas into the offshore wells, microseismic activity was detected in the area. The Spanish authorities asked the promoter to suspend operations. The project was ultimately cancelled.

2. In November 2013, a Spanish civil society organisation - Plataforma Ciutadana en Defensa de les Terres del Sénia - complained to the EIB about environmental and safety problems with the Castor project [2] . In particular, it stated that the project had been financed without a prior seismic risk assessment. It asked the EIB to suspend its payments to the promoter.

3. The EIB dealt with the complaint through its Complaints Mechanism Division (the ‘EIB-CM’) [3] .

4. In May 2015, the EIB-CM issued an ‘Initial Assessment Report’, proposing to carry out a full investigation. In November 2015, the EIB-CM informed the complainant that it had hired
external experts to assist it during the investigation phase, and that an on-site inspection would take place in January 2016. In February 2017, the EIB-CM informed the complainant that internal consultations on its final decision on the complaint (the ‘Conclusions Report’) were ongoing.

5. In March 2017, as it had not yet received the EIB-CM’s Conclusions Report, the complainant turned to the Ombudsman.

The inquiry

6. The Ombudsman opened an inquiry into the time taken by the EIB-CM to complete its examination of the complaint.

7. In June 2017, the Ombudsman’s inquiry team met with representatives of the EIB-CM and the relevant EIB departments, and inspected the file on the complaint. In November 2017, the Ombudsman received the EIB’s reply on the complaint and, in January 2018, the complainant’s comments on the EIB’s reply.

8. On 7 March 2018, that is, more than four years after the complaint had been submitted, the EIB-CM adopted its Conclusions Report [4].

Arguments presented to the Ombudsman

9. The complainant stated that the EIB had failed to take a timely decision on its complaint. It noted that it had signalled to the EIB the environmental risks linked to the project as early as 2010, when the promoter had first asked the EIB to finance the project. It had raised the issue on several occasions thereafter.

10. In its reply, the EIB said that several factors had impacted how long its investigation took. The project was complex, as was the financial structure designed to support it. The EIB also needed to deal with commercially-sensitive information. In addition, the political and financial context in which the complaint-handling process was carried out was “delicate” and needed to be taken into account [5]. This affected the timing of operational decisions that the EIB and the EIB-CM needed to take [6]. Moreover, the complaint itself was complex. The complainant had raised several concerns about a wide variety of aspects of the project, leading the EIB-CM to open two different cases: one related to the environmental and social impact of the project, and industrial risks, and another concerning governance aspects. The EIB-CM also had to hire external experts to assess in full the concerns raised by the complainant, including technical aspects.

11. Finally, extensive internal consultations were needed “in an attempt to reach consensus on the multifaceted issues to be presented to the Management Committee.” [7]

12. In its comments on the EIB’s reply, the complainant disagreed with the reasons put forward by the EIB to justify the delay and with the need for the EIB’s departments to reach consensus.
The Ombudsman's assessment

13. It took the EIB-CM more than four years to reach a final decision. This is a considerably longer period than that envisaged in its internal rules.

14. The Ombudsman accepts that the complexity of the case, coupled with the political and financial context, partly justify the time taken by the EIB-CM to assess the complaint, carry out an investigation and prepare the necessary reports. The documents inspected by the Ombudsman show that the need to organise a tender procedure to hire external experts and the fact that on-site visits had to be postponed contributed to the delay in the initial assessment phase and the investigation phase.

15. However, the inspection also revealed that the internal consultation process on the EIB-CM's reports, as well as on a report prepared by the external experts assisting the EIB-CM took a long time. This was mainly because the relevant EIB departments disagreed with the EIB-CM on various aspects of the complaint. They made extensive comments on the Initial Assessment Report and the draft Conclusions Report drawn up by the EIB-CM. While this should not be, in and of itself, problematic, it is important that the EIB has proper procedures in place so that any such comments are satisfactorily addressed in good time.

16. In this case, the EIB seems to have been reluctant to submit the EIB-CM's Conclusions Report and the comments of the relevant EIB departments on that Report to the Management Committee until there was consensus between the EIB-CM and the relevant EIB departments.

17. The Ombudsman understands that the EIB may prefer that the EIB-CM and the relevant EIB departments reach consensus before the Conclusions Report is submitted to the Management Committee and before it is made public. However, the EIB-CM's rules do not require this to happen. These rules state that the EIB-CM must respond to critical comments but does not have to obtain the agreement of the relevant EIB departments before proceeding.

18. The Ombudsman recently addressed a recommendation (in case 146/2017/DR) to the EIB as her inquiry identified issues similar to those arising in this case.

19. In her inquiry in case 146/2017/DR, the Ombudsman welcomed the fact that the EIB had revised the EIB Group Complaints Mechanism Policy and Procedures. The new Policy and Procedures should help remedy the shortcomings identified in case 146/2017/DR and in this case. As the Ombudsman recommended in case 146/2017/DR, where there are disagreements between the EIB-CM and other EIB departments, the EIB should resolve the matter as quickly as possible, submitting it to the Management Committee if necessary.

20. The Ombudsman takes the view that, even though maladministration has been identified in this case (see below), it is not necessary to reiterate her recommendation. She therefore
Conclusion
Based on the inquiry, the Ombudsman closes this case with the following conclusions:

The EIB failed to take a final decision on the complaint concerning the Castor project within a reasonable period of time. This was maladministration.

The Ombudsman has already made the appropriate recommendation in case 146/2017/DR. She does not find it necessary to reiterate that recommendation, and therefore closes the case.

The complainant and the EIB will be informed of this decision.

Emily O'Reilly
European Ombudsman
Strasbourg, 19/12/2018


[3] According to the Memorandum of Understanding between the European Ombudsman and the EIB, before turning to the Ombudsman, complainants should have recourse to an effective internal EIB complaints procedure. The Complaints Mechanism deals with complaints against the EIB by individuals, organisations or corporations affected by EIB activities. It is independent from the other operating sections of the EIB.


[5] The EIB referred to the following events that occurred while the EIB-CM was dealing with the complaint: after the project implementation was suspended (in October 2013) due to seismic activity, the promoter submitted its request to the Spanish authorities to relinquish the concession (in July 2014). In September 2014, the Spanish Government accepted this request. The project was then transferred to a partly public-owned utility, and suspended in November 2014. The promoter was repaid the amount he had invested. The promoter then fully repaid the bondholders, including the EIB, thus ending the contractual relationship with the EIB.
For instance, EIB-CM on-site visits had to be postponed due to political and financial negotiations that were taking place.

The Management Committee is the EIB's permanent executive body.

The rules applicable at the time were set out in the EIB-CM's ‘Operating Procedures’, and in the ‘Principles, terms of reference and rules of procedure’ that applied to the EIB-CM. According to the rules of procedure, a response to a complaint should be sent within 40 working days after the date of the acknowledgement of receipt (Article 10.2). For complex issues, or for reasons beyond the control of the EIB-CM, the deadline for providing a final reply may be extended for an additional maximum period of 100 working days (Article 10.2). This may, in turn, be extended for “problem solving” (Article 10.3, which does not specify a time limit).

The internal consultations lasted three months for the Initial Assessment Report and 18 months for the Conclusions Report. For more information on the timeline of the various stages, see: http://www.eib.org/en/about/accountability/complaints/cases/castor-underground-gas-storage.

During the investigation phase, the EIB-CM and the relevant EIB departments discussed a report prepared by the external experts assisting the EIB-CM. The external experts' report was sent to the relevant EIB departments in March 2016 and was finalised in August 2016.

Under the EIB-CM's Operating Procedures in place at the time (Articles 4.7 and 5.4), when the EIB's departments disagree with the findings and conclusions of the EIB-CM, the EIB can refer the matter to the Management Committee (thus accelerating the complaint-handling process). The Management Committee cannot change the content of the EIB-CM reports, but it can add a response stating the position of the EIB's management team on some or all of the findings or conclusions of the EIB-CM.

Article 4.7 of EIB-CM's Operating Procedures in place at the time.


Available at: http://www.eib.org/attachments/consultations/eib_complaints_mech_procedures_en.pdf.