

Annex

Table containing, where possible, suggested changes to the draft Policy and Procedures

POLICY	
Current Article	Proposed changes
<p>3. Maladministration</p> <p>3.1 Maladministration means poor or failed administration. It occurs when the EIB Group fails to act in accordance with a rule or principle that is binding upon it, notably EIB Group’s policies, standards and procedures.</p> <p>3.2. The concept of maladministration includes failure by the EIB Group to comply with human rights⁵, with the applicable law, or with the principles of good administration.</p> <p>3.3. Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle related policies and to other applicable policies of the EIB Group. However, the EIB Group’s role with regard to compliance of projects with national and EU law is limited to its obligations as defined in its Policies and Procedures.</p> <p>3.4. Maladministration always refers to the Institution (a member of the EIB Group) and does not refer to individual staff members of the Institution.</p> <p>⁵ For the project it finances, the EIB Group follows a rights based approach reflecting the principles of the Charter of Fundamental Rights of the EU, and the UN Universal Declaration of Human Rights.</p>	<p>3. Maladministration</p> <p>3.1 Maladministration means poor or failed administration. It occurs when the EIB Group fails to act in accordance with a rule or principle that is binding upon it, <u>including in the case of the EIB Group, its own policies, standards and procedures, notably EIB Group’s policies, standards and procedures.</u></p> <p>3.2. The concept of maladministration includes failure by the EIB Group to comply with human rights⁵, with the applicable law, or with the principles of good administration.</p> <p>3.3. Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle related policies and to other applicable policies of the EIB Group. The However, the EIB Group’s obligations role with regard to compliance of projects with national and EU law are is limited to its obligations as defined in its Policies and Procedures⁶.</p> <p>3.4. Maladministration always refers to the Institution (a member of the EIB Group) and does not refer to individual staff members of the Institution.</p> <p>⁵ For the project it finances, the EIB Group follows a rights based approach reflecting the principles of the Charter of Fundamental Rights of the EU, and the UN Universal Declaration of Human Rights.</p>

<p>4.3 Admissibility</p> <p>4.3.1 Any natural or legal person who alleges a case of maladministration of the EIB Group in its actions and/or omissions can lodge a complaint.</p> <p><i>Exceptions</i></p> <p>4.3.2 Complaints against International Organisations, EIB Group counterparts such as Borrowers/Promoters, EU institutions and bodies, national, regional or local authorities (e.g. government departments, state agencies and local councils) are not admissible. In such cases, the EIB-CM may inform the complainant(s) of the possibility to address another competent authority.</p> <p>4.3.3 Complaints submitted by the EIB Group’s staff are not admissible. Such cases will be dealt with by other relevant internal mechanisms, such as those under the responsibility of Personnel as regards working relations and/or the Compliance Directorate (OCCO) for cases related to the EIB Group’s Code of Conduct.</p> <p>4.3.4 Complaints which have already been lodged with other administrative or judicial review mechanisms or which have already been settled by the latter are not admissible.</p> <p>4.3.5 Complaints from anonymous parties, complaints with the objective to gain a competitive economic advantage or that are excessive, repetitive, clearly frivolous or malicious in nature are not admissible.</p> <p>4.3.6 Complaints concerning the investment mandate of the EIB Group, its financing or investment decisions <i>per se</i>, its credit policy, or other discretionary decisions fall outside the scope of the</p>	<p>⁶ Insert link to relevant documents.</p> <p>4.3 Admissibility</p> <p>4.3.1 Any natural or legal person who alleges a case of maladministration of the EIB Group in its actions and/or omissions can lodge a complaint.</p> <p><i>Exceptions</i></p> <p>4.3.2 Complaints against International Organisations, EIB Group counterparts such as Borrowers/Promoters, EU institutions and bodies, national, regional or local authorities (e.g. government departments, state agencies and local councils) are not admissible. In such cases, the EIB-CM may inform the complainant(s) of the possibility to address another competent authority.</p> <p>4.3.3 Complaints submitted by the EIB Group’s staff are not admissible. Such cases will be dealt with by other relevant internal mechanisms, such as those under the responsibility of Personnel as regards working relations and/or the Compliance Directorate (OCCO) for cases related to the EIB Group’s Code of Conduct.</p> <p>4.3.4 Complaints which have already been lodged with other administrative or judicial review mechanisms or which have already been settled by the latter are not admissible.</p> <p>4.3.5 Complaints from anonymous parties, complaints with the objective to gain a competitive economic advantage or that are excessive, repetitive, clearly frivolous or malicious in nature are not admissible.</p> <p>4.3.6 Complaints concerning the investment mandate of the EIB Group, its financing or investment decisions <i>per se</i>, its credit policy, or other</p>
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<p>Complaints Mechanism.</p> <p>4.3.7 Complaints challenging the legality of EIB/EIF Policies decided by the EIB/EIF Governing Bodies are not admissible.</p> <p>4.3.8 The EIB Group Complaints Mechanism cannot deal with project procurement complaints, which fall within the mandate of the EIB Project Procurement Complaints System.</p> <p>4.3.9. The EIB Group Complaints Mechanism cannot deal with allegations of prohibited conduct as defined in the EIB Group Anti-Fraud Policies⁷, which will be handled by the EIB Group’s competent services. If during the inquiry, it appears that some allegations concern prohibited conduct, the relevant part of the complaint will be handed over to the EIB Group’s competent services in accordance with the applicable EIB Group Policies and procedures.</p> <p>[...]</p> <p>⁷ Prohibited conduct includes corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing. See EIB Anti-Fraud Policy at http://www.eib.org/attachments/strategies/anti_fraud_policy_20130917_en.pdf and EIF Anti-Fraud Policy at: http://www.eif.org/attachments/publications/about/Anti_Fraud_Policy.pdf</p>	<p>discretionary decisions <u>[explain which types of decisions are concerned]</u> fall outside the scope of the Complaints Mechanism.</p> <p>4.3.7 Complaints challenging the legality of EIB/EIF Policies decided by the EIB/EIF Governing Bodies are not admissible. <u>[See letter]</u></p> <p>4.3.8 The EIB Group Complaints Mechanism cannot deal with project procurement complaints, which fall within the mandate of the EIB Project Procurement Complaints System. <u>[See letter]</u></p> <p>4.3.9. The EIB Group Complaints Mechanism cannot deal with allegations of prohibited conduct as defined in the EIB Group Anti-Fraud Policies⁷, which will be handled by the EIB Group’s competent services. If during the inquiry, it appears that some allegations concern prohibited conduct, the relevant part of the complaint will be handed over to the EIB Group’s competent services in accordance with the applicable EIB Group Policies and procedures.</p> <p>[...]</p> <p>⁷ Prohibited conduct includes corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing. See EIB Anti-Fraud Policy at http://www.eib.org/attachments/strategies/anti_fraud_policy_20130917_en.pdf and EIF Anti-Fraud Policy at: http://www.eif.org/attachments/publications/about/Anti_Fraud_Policy.pdf</p>
<p>5.3 Functions</p> <p>5.3.3 In order to ensure the implementation of these functions, the EIB-CM is predominantly compliance focussed. The EIB-CM compliance review is not necessarily limited to an investigation of compliance with existing policies and procedures (which is more like a box checking exercise), but might also include a substantive review of compliance with standards, especially in the case of complaints regarding environmental and social impacts.</p>	<p>5.3 Functions</p> <p>5.3.3 In order to ensure the implementation of these functions, the EIB-CM is predominantly compliance focussed. The EIB-CM compliance review is not necessarily limited to an investigation of compliance with existing policies and procedures (which is more like a box checking exercise), but might also include a substantive review of compliance with standards, especially in the case of complaints regarding environmental and social impacts.</p>

The EIB-CM reviews the Bank's activities with a view to determining whether maladministration has taken place which is attributable to the Bank. To this end, the EIB-CM reviews whether the EIB services have provided a consistent and reasonable explanation of their position, and whether it is based on complete, accurate, and reliable information identifiable at the time. Using technical expertise when necessary, the EIB-CM reviews the facts in order to establish an independent opinion on whether there has been a manifest error in the Bank's position or a manifest breach of the rules that applied to the services at the time. Maladministration review by the EIB-CM is not intended to substitute the services' professional judgement.

Such review includes but is not limited to situations where:

- There are major discrepancies between, on one side, the information provided by the complainant(s) or otherwise available in the public domain and, the other side, the information provided by the EIB Group concerned services and/or by the Promoter;
- There is clear indication that the EIB Group's concerned services have not reviewed the information provided by the Promoter or other relevant international, national or local authorities as part of the EIB Group's due diligence or monitoring.

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Annex 1 THE EUROPEAN OMBUDSMAN

1. Who can complain?

1.1 If EU citizens or any natural or legal person residing or having its registered office in an EU Member State feel that the EIB Group has not dealt with their complaint in a timely and/or correct manner, they can, in accordance with Article 228 of the Treaty on the Functioning of the European Union and regardless of a direct concern in the alleged maladministration, lodge a complaint against the EIB Group with the European Ombudsman.

1.2 Moreover, following the Memorandum of Understanding signed by the EIB Group and the European Ombudsman, the latter commits to using its own initiative power systematically in order to handle complaints lodged against the EIB by non-eligible complainant(s).
<http://www.ombudsman.europa.eu/cooperation/en/20080709-1.htm>.

2 How to Complain

2.1 A complaint can be lodged with the European Ombudsman in any of the official languages of the European Union, setting out clearly the identity of the complainant(s) and the grounds of the complaint. The complaint can be lodged by mail, fax or e-mail. To ensure that all the necessary information is provided, a complaint form is available at the European Ombudsman's office or at the following website:
<http://www.ombudsman.europa.eu/atyourservice/interactiveguide.faces>.

3. Subject of the complaint

3.1 Complaints against the EIB Group may concern alleged maladministration of the EIB Group in its actions and/or omissions. As the European Ombudsman practice has shown so far, the most common

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3.1 Complaints against the EIB Group may concern alleged maladministration of the EIB Group in its actions and/or omissions. As the European Ombudsman practice has shown so far, the most common allegations are administrative irregularities, failure to reply, unnecessary

allegations are administrative irregularities, failure to reply, unnecessary delay, refusal of information, unfairness, discrimination and abuse of power.

a. Eligibility

3.1 The European Ombudsman cannot investigate complaints against national, regional or local administrations in the Member States of the European Union, even when the complaints refer to the EIB Group's field of activities. Such complaints should be addressed to national/local/special ombudsmen or committees on petitions in national/regional parliaments.

3.2 The European Ombudsman cannot deal with matters that are currently before a court or that have already been settled by a court.

3.3 Before turning to the European Ombudsman, complainant(s) shall have recourse to the EIB Group's complaints mechanism. The European Ombudsman considers that the record of how the EIB Group 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 shall therefore include an explanation of why the complainant(s) contest the record or the EIB Group's position as set therein¹⁶.

b. Time limit for complaints

3.1 A complaint must be lodged within two years from the date of acknowledgement of the facts on which the complaint is based.

c. Outcome of the procedure before the European Ombudsman

3.1 If the case is not resolved satisfactorily during the course of the inquiries, the Ombudsman will try, if possible, to find a friendly solution

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b. Time limit for complaints

3.1 A complaint must be lodged within two years from the date of ~~acknowledgement of the facts on which the complaint is based.~~ on which the facts on which it is based came to the attention of the person lodging the complaint.

c. Outcome of the procedure before the European Ombudsman

~~3.1 If the case is not resolved satisfactorily during the course of the inquiries, the Ombudsman will try, if possible, to find a friendly solution~~

which puts right the case of maladministration and satisfies the complainant(s).

3.2 If the attempt at conciliation fails, the Ombudsman can make recommendations to solve the case. Depending on the outcome of the inquiry, the recommendations can include further remarks on the administrative behaviour of the concerned institution or body, the request to take corrective action, if possible, as well as critical remarks in case the European Ombudsman deems that the institution or body complained against had committed maladministration. If the institution does not accept the recommendations of the European Ombudsman, s/he can make a special report to the European Parliament.

¹⁶ Article 2.4 of the Statute of the European Ombudsman provides that a complaint must be "preceded by the appropriate administrative approaches to the institutions and bodies concerned". See also the Memorandum of Understanding between the European Investment Bank and the European Ombudsman, July 2008.

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3.1. If the Ombudsman considers that a complaint can be resolved, the Ombudsman shall seek a solution with the institution concerned. The Ombudsman may also make suggestions for improvement regarding issues related to the inquiry. Where the Ombudsman finds no maladministration, that a solution has been found or that no further inquiries are justified, the inquiry shall be closed with a decision setting out findings.

3.2. Where the Ombudsman finds maladministration, the Ombudsman shall make any appropriate recommendation(s) to the institution concerned and ask the institution to provide an opinion within three months. The Ombudsman, after analysing the opinion of the institution and any comments submitted by the complainant, may close the inquiry setting out definitive findings. If the institution does not accept the recommendations of the Ombudsman, s/he can make a special report to the European Parliament.

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PROCEDURES

Current Article	Proposed changes
<p>1. Standard Procedure</p> <p>1.1 Admissibility check/registration</p> <p>1.1.1 The responsibility for checking admissibility lies with the Head of EIB-CM. The admissibility check makes no judgement on the merits of the complaint.</p> <p>1.1.2 The admissibility check, in line with article 4.3 of the Policy is in principle performed within 10 working days from the reception of the complaint. Whenever necessary (e.g. additional information is required from the concerned stakeholders) this period may be extended, up to a maximum of 20 working days.</p> <p>1.1.3 As part of the admissibility check, the relevant EIB Group services are consulted on admissibility before registration. In case of disagreement between the relevant EIB Group services and the Head of EIB-CM, the Inspector General decides on the admissibility of the complaint.</p> <p>1.1.4 After the admissibility check, the complaint is registered by CM and the admissible complaints follow the complaints handling process.</p>	<p>1. Standard Procedure</p> <p>1.1 Admissibility check/registration</p> <p>1.1.1 The responsibility for checking admissibility lies with the Head of EIB-CM. The admissibility check makes no judgement on the merits of the complaint.</p> <p>1.1.2 The admissibility check, in line with article 4.3 of the Policy is in principle performed within 10 working days from the reception of the complaint. Whenever necessary (e.g. additional information is required from the concerned stakeholders) this period may be extended, up to a maximum of 20 working days.</p> <p>1.1.3 As part of the admissibility check, the relevant EIB Group services are <u>can be</u> consulted on admissibility before registration. In case of disagreement between the relevant EIB Group services and the Head of EIB-CM, the Inspector General <u>may, in exceptional and duly justified cases,</u> decides on the admissibility of the complaint.</p> <p>1.1.4 After the admissibility check, the complaint is registered by CM and the admissible complaints follow the complaints handling process.</p>