



Ms Beate Gminder  
Secretary General  
The European Ombudsman  
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France

Subject: Consultation on the draft revised EIB Group Complaints Mechanism Policy and Procedures

Luxembourg, 05 May 2017

SG/DIR/2017-465

Dear Ms Gminder,

Thank you for your letter of 16 February 2017 with the European Ombudsman's (EO) input into the draft revised EIB Group Complaints Mechanism Policy and Procedures as well as the note on the establishment of a Project Procurement Complaints Committee (PCC) to handle project procurement complaints.

We are pleased to inform you that the Bank's Management Committee (MC) has authorized us to launch the public consultation process. The announcement will be made on our website on 8 May 2017.

Please find hereafter a detailed explanation of the various changes that have been made to the draft Policy and Procedures further to your comments.

#### Definition of maladministration (section 3 of the Policy)

In order to avoid any discrepancy between the respective definitions, the EIB has accepted to align the definition of maladministration (section 3.1 and 3.3 of the Policy) to that of the EO, endorsed by the European Parliament. In addition, some examples of maladministration have been added (see the preamble).

#### Admissibility criteria (section 4.3 of the Policy)

The EIB has amended the text to clarify that (i) "discretionary decisions" mentioned under section 4.3.6 as falling outside the scope of the Complaints Mechanism (CM) relate solely to commercial or banking decisions and (ii) that the complaints challenging the legality of EIB Group policies are not handled by the EIB-CM, but will be handled by the EIB's Secretary General or by the EIF's Chief Executive.



### Decision on admissibility (section 1.1.3 of the Procedures)

We have reworded the consultation process with services and clarified that a final decision on admissibility by the Inspector General will take place in exceptional cases only and will be duly justified (section 1.1.3 of the Procedures).

### The creation of a new PCC

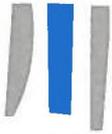
To accompany the EIB-CM public consultation, the Bank will draft an explanatory note on the proposed PCC system outlining, amongst other things, how the Bank will ensure that the new system will be effective and credible.

Furthermore, the EIB-CM will be included in the PCC as observer, to ensure that lessons are drawn and the EIB-CM is continuously involved. The PCC Secretariat, with the support of services involved and EIB-CM, will also issue an internal annual report on lessons learned from individual cases. These issues will be reflected in the internal PCC procedures.

### Comments on specific provisions

In addition to those outlined above, we have also made several additional changes to address your observations on the following six specific paragraphs:

1. **Use of the term allegations instead of concerns.** We have amended sections 4.1.6 and 5.3.2 accordingly.
2. **Internal reporting.** Section 1.4.4 of the Procedures remains unchanged as the EIB believes that the EIB-CM already extends its investigations beyond original allegations. However, as they are not part of the original allegations, the EIB believes they should be reported on internally, as part of the EIB-CM's advisory function. The term "third parties" has however been clarified, as per your suggestion.
3. **Role of Management Committee in the Draft Conclusions Report (section 1.6.2 of the Procedures).** The MC will only receive the draft Conclusions Report in case of disagreement with the services, to allow the MC to make comments before external consultation. In this consultation process, the EIB-CM has to consider the comments, but is not under any obligation to accept them. This is also to ensure that the MC is informed when the Bank makes documents on which there is disagreement publicly available. The EIB has therefore not changed this section.
4. **Simplify section 5.3.3 of the Policy (scope of review).** The purpose of this section is to clarify the scope of the EIB-CM's review. Experience has shown that lack of clarity can be a potential source of disagreement between the CM and other services. The key elements are the independent opinion, technical expertise, maladministration review and manifest error/breach. The EIB concluded that it is therefore important to maintain all these elements in the section.
5. **Disclosure and Publication regime (section 4.6 of the Policy).** The disclosure regime, including confidentiality of complainants, has been changed from presumption of confidentiality to presumption of disclosure. Under section 4.6.2 complainants can indicate that their complaint should be treated confidentially, but this has to be motivated in order to justify the exception. In our opinion, this should not discourage complaints, but rather serve to protect complainants under certain circumstances. The EIB has therefore not changed this section.



6. **Annex 1 to the Policy on the European Ombudsman.** We have accepted your suggested changes to the Annex (sections b 3.1 and c 3.1 and 3.2) to take into account the new implementing provisions.

#### **Your comments on public consultation**

We have taken note of your suggestion to include both the Policy and Procedures in the public consultation and to make publicly available an explanatory note as well as relevant background information (in particular the External Quality Review). The EIB has decided that the public consultation will consist in the revised Policy document and the above-mentioned explanatory note, explaining not only the proposed changes compared to the current Policy and Procedures, but also explaining the rationale behind the set-up of the new EIB Project Procurement Complaints System.

The revised EIB Guide to Procurement, including the new Procurement Complaints Procedures, will be subject to a limited public consultation, whereby the Bank will consult with the European Commission and other key professional stakeholders. Before its first meeting, the Terms of Reference for the PCC will be developed, and include its role, membership, admissibility, voting procedures, role of secretariat, and responsibilities for the preparation of files.

For your convenience, please find attached a marked version of the draft revised Policy and Procedures, incorporating the above changes.

Thank you very much for the very useful feedback. We hope that you find the above detailed response to your input helpful, and we are looking forward to your further participation in the consultation process.

Yours sincerely,

Marjut Santoni  
Deputy Secretary General

Jan Willem van der Kaaij  
Inspector General

Cc: Mr Klaus Trömel, Secretary General  
Mr Felismino Alcarpe, Head of Division, Complaints Mechanism  
Mr Hakan Lucius, Head of Division, Stakeholder Engagement, Transparency and Civil Society

Annexes:  
Draft Policy of EIB Group Complaints Mechanism  
Draft Procedures of EIB Group Complaints Mechanism