



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Werner Hoyer
President
European Investment Bank

Strasbourg, 27/02/2017

Complaint 1316/2016/AB

Dear Mr President,

I have received a complaint against the European Investment Bank (EIB) from Ms Anaïs Berthier on behalf of ClientEarth, CEE Bankwatch Network and Counter Balance. The complaint to my Office concerns alleged shortcomings in the EIB's Transparency Policy as well as the manner in which the EIB responded to the complaint made to the EIB, by Ms Berthier, on 16 February 2016.

The complainants are concerned that:

1. the EIB's Transparency Policy is not compatible with the Aarhus Convention, the Aarhus Regulation and Regulation 1049/2001 regarding public access to documents; and
2. the EIB declared inadmissible most of the original complaint they lodged with the EIB Complaints Mechanism (EIB-CM).

I have decided to open an inquiry into this complaint¹, and I have concluded that it would be useful to ask the EIB for a reply in relation to some of the complainants' arguments, in order to assess the case further.

In conducting this inquiry, I take into consideration the fact that the EIB has launched a review of the EIB-CM Policy and Procedures, which will include a public consultation to seek the views of civil society.

A. Concerning that part of the complaint relating to the EIB-CM's decision to declare inadmissible most of the complainants' allegations

¹ With the one exception regarding the compliance of the EIB's activities with the EIB Group's policy framework, set out under point 1.2.2 of the complaint, which I understand that the EIB-CM is still examining. Accordingly, I have decided not to deal with that aspect of the complaint at this stage.



The EIB-CM is governed by a set of Principles, Terms of Reference and Rules of Procedure adopted by the EIB Board of Directors on 2 February 2010 and supplemented by Operating Procedures approved by the Management Committee in December 2011.

The EIB-CM based its decision to declare the complaint inadmissible on the provisions of the EIB-CM Principles and Terms of Reference, notably article 3.1 of the Principles and articles 1.1, 4.2 c) and 4.2 g) of the Terms of Reference. The EIB-CM, however, quoted these provisions in its decision without any additional explanation as to why they would render the complaint inadmissible.

The complainants consider that the EIB's decision does not include a detailed and comprehensive reasoning on how their original complaint does not comply with the admissibility requirements established in the EIB-CM legal framework. The complainants also believe that the EIB's interpretation of the above articles deliberately seeks to narrow the EIB-CM mandate.

In my view, it is important that the admissibility criteria for complaints to the EIB-CM are clear to the Bank's stakeholders. I would therefore appreciate it if the EIB could clarify its reasoning and explain why Article 3.1 of the Principles and Articles 1.1, 4.2 c) and 4.2 g) of the Terms of Reference render the complaint inadmissible.

The complainants are also concerned that the EIB allegedly breached its rules of procedures as regards acknowledging receipt of the complaint and communicating the outcome of the admissibility check.

(i) The complainants argue that the EIB-CM did not communicate the outcome of the admissibility check at the same time as the acknowledgment of receipt.

According to article 4.3 of the EIB-CM Operating Procedures, "[t]he admissibility check is performed within the 10 working days and the result is communicated to the complainant(s) **at the same time as the acknowledgement of receipt**". I however note that the EIB-CM Rules of Procedure contain a slightly different provision according to which "[a]fter receipt of a complaint, the EIB CM ensures that an acknowledgement of receipt is sent to the complainant within ten working days. The acknowledgement informs the complainant of the date by which the EIB's official reply to the complaint can be expected and **may include** the communication of the admissibility or of the inadmissibility of the complaint."

I would appreciate it if the EIB could clarify its current rules and practices in this area.

(ii) The complainants consider that the EIB's acknowledgment of receipt of their complaint did not deal with the question of its admissibility. They consider that, the acknowledgement simply informed the complainants of the date by which to expect a formal response; they understood this to imply that the complaint was considered admissible.

I note that the acknowledgment of receipt also informed the complainants that their complaint had been registered. According to article 4.3 of the Operating Procedures, "[a]fter admissibility check, complaints are registered and admissible complaints follow the internal complaints handling process. Complainants are informed (i) that the complaint has been **registered**, (ii) that an inquiry/assessment is initiated and (iii) **about the date by which they may expect a response** (40/140 working days). If a



complaint is inadmissible, the complainants are informed of the reasons of inadmissibility and provided with suggestions as to whom they may address their concern, if applicable’.

I would appreciate it if the EIB would reply to the complainants’ argument. In particular, the EIB’s reply should comment on the complainants’ understanding that the acknowledgment of receipt, sent on 1 March 2016, conveyed that the complaint was admissible.

(iii) The complainants consider that, even if the complaint was inadmissible, the EIB should have provided them with advice on alternative measures.

As an institution committed to good administration, the EIB is expected to address questions and issues from the public. Article 9 of the Code of good administrative behaviour for the staff of the European Investment Bank in its relations with the public² provides that, “1. *Members of staff shall act in a conscientious, correct, courteous and approachable manner. In replying to correspondence, telephone calls and e-mails, members of staff shall endeavour to be as helpful as possible and to answer enquiries.*

2. If an enquiry does not fall within their area of responsibility, staff shall refer members of the public to the relevant Bank department”.

Article 13 of the same Code also provides that “1. *Members of staff shall ensure that a reply to all requests and complaints addressed to the Bank is provided within an acceptable period, without delay, and in any event no later than two months following receipt. [...] 3. All replies to requests and complaints must be **reasoned in such way that the person concerned is precisely informed of the grounds and arguments on which they are based.***”

It would be useful if the EIB could indicate why it did not address the complainants’ concerns about the Transparency Policy outside the scope of the EIB-CM, for example by referring their letter to another department, which would appear to be in line with Articles 9 and 13 of the Code of good administrative behaviour for the staff of the European Investment Bank in its relations with the public.

B. Concerning that part of the complaint relating to the compatibility of the EIB’s Transparency Policy with EU and international rules on access to information

In the normal course, the starting point for my inquiry would be to look at how the EIB dealt with the matters raised in the complaint through its own internal mechanisms and procedures. As the EIB-CM declared most of the complainants’ allegations about the new Transparency Policy inadmissible, there is presumably no existing record of how the EIB dealt with the matters raised in the complaint.

According to the principle of good administration, I would suggest that the EIB replies to the complainants’ concern in relation to the compatibility of its Transparency Policy with the Aarhus Convention, the Aarhus Regulation and

² http://www.eib.org/attachments/general/code_en.pdf



Regulation 1049/2001 (except for the allegations regarding the compliance of the EIB's activities with the EIB's policy framework set out under point 1.2.2 of the complaint, if the EIB-CM is still examining them.) I would be grateful also to receive a copy of your reply to the complainants.

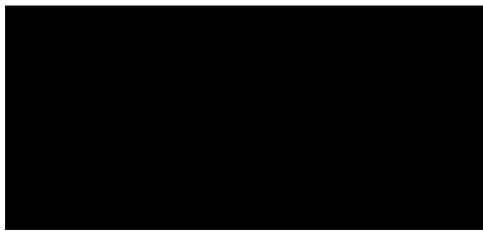
Please note that I may decide to forward your reply and related enclosures to the complainants for comments.

If you wish to submit documents or information that you consider to be confidential and which should not be disclosed to the complainants, please contact the case handler Alice Bossière at tel.:+ 32 2 283 34 01 [REDACTED]

I would be grateful to receive your institution's reply within three months of receipt of this letter.

Attached to this e-mail, please find a copy of the complaint.

Yours sincerely,



Emily O'Reilly
European Ombudsman

Enclosure:

- Copy of the complaint in case 1316/2016/AB