

Civil Society joint paper – Executive Summary

Submission to the EIB's Complaints Mechanism Review public consultation

29 September 2017

The 25 below-signed organizations appreciate the opportunity to provide comments on the draft Policy and Procedures for the Complaints Mechanism (CM) of the European Investment Bank (EIB). The revision of the CM is a crucial opportunity to strengthen the accountability of the EIB towards European institutions and citizens. Therefore, we take this opportunity to formulate the following key recommendations:

- 1. The proposed draft CM Policy and Procedures are unacceptable and, if adopted, would lead to a serious setback for the independence and effectiveness of the CM, making it almost unusable for potential complainants.**
- 2. Fundamental reforms to the existing CM Policy and Procedures are necessary in order to address the serious procedural and structural flaws of the CM.**
- 3. For those changes to take place, a more equitable and meaningful public consultation is needed: this should include a second round of consultation on a substantially revised draft that merges the Policy and Procedures.**

For a decade, civil society has been increasingly monitoring the operations of the EIB. In this regard, civil society organisations (CSOs) have demanded that the bank steps up its accountability to citizens affected by its activities inside and outside the European Union, as well as towards European taxpayers and decision-makers.

In recent years, a set of reports has assessed the functioning of the EIB's current accountability mechanism, coming to a critical conclusion: the CM is struggling to hold the EIB accountable, prevent harms and deliver remedy to project-affected communities because of procedural and structural weaknesses. More specifically, the CM's independence is jeopardized, its recommendations are not binding and it is marginalised within the EIB. While promising on paper, CSOs have acknowledged that, in practice, the CM has to be reformed to overcome the above-mentioned obstacles and fully play its role of ensuring accountability and preventing and remedying harm.

Such expectation is also the concluding observation of the report of the External Quality Review initiated by the EIB in 2015: *"To maintain and further improve the credibility and current standing of the CM among internal and external stakeholders, concerted efforts must be made by the EIB Management, its staff, and the EIB-CM staff to maintain and improve its actual and perceived independence, the transparency of its procedures and its ability to discharge its functions on a timely and effective manner. We hope that this review and the upcoming consultations will contribute to these important objectives"*. The European Parliament also sent similar signals to the EIB in resolutions adopted in 2015 (2014/2156(INI)), 2016 (2015/2127(INI)) and 2017 (2016/2098(INI)). Finally, in February 2017, the European Ombudsman (EO) sent her [comments](#) on the CM policy, highlighting the need to ensure operational independence, transparency, accessibility, timeliness, and adequate resources.

Key recommendations and areas for improvement:

1/ Strengthening the independence of the Complaints Mechanism

There is no IAM whose system has codified to such a degree the undue influence by the very actors whose actions and decisions are under review. The draft CM Procedures provide that the Inspector General will decide on admissibility of complaints when EIB Services has objected to the decision by the head of the CM.¹ Perhaps more egregiously, the CM cannot proceed to undertake a compliance review unless EIB Services or the Management Committee - the entity that is ultimately responsible for the actions under review - agrees.²

We would like to recall the following conclusion of the External Quality Review: “*We strongly urge avoiding giving responsibility for handling complaints to those against whose decisions or actions a complaint has been lodged. Doing so would be a step backwards and contradict best practice in other institutions*”.

As detailed in Annex B, the draft Policy also introduces new requirements for the CM to consult with the bank’s Services and the Management Committee in the process of investigating a complaint without similar requirements to consult with complainants. This not only undermines the fairness of the process, but it also compromises the independence of the CM in making its findings by formally establishing a process for bank management to control the contents of CM reports at each stage before sharing with the complainant.

It is not possible to label the CM as “independent” when it does not even have the authority to decide on the **admissibility of complaints or whether to undertake an investigation**. These provisions should be removed from the draft Policy and Procedures to ensure the independence of the CM and integrity of the process.

2/ Improving the governance of the CM

Reforms should include ensuring Board oversight of the CM. It is urgent for the Board of Directors to increase its engagement and scrutiny on complaints lodged to the bank, especially at a time when the EIB is ramping up its operations inside and outside of Europe. The Policy should establish a systematic flow of information, including reports and recommendations on individual cases, directly between the CM and the Board.

The democratic legitimacy of the CM should be strengthened by creating a **nomination committee including external stakeholders for the hiring process of the head of the CM**.

3/ Countering the restrictions on the accessibility of the CM

The draft Policy limits accessibility of the EIB through restricting admissibility of certain types of complaints without providing any reasonable justification.³

The draft Policy removes **project procurement** complaints from the jurisdiction of the CM. Instead, these complaints would fall within the mandate of a new, as yet to be established, EIB Project Procurement Complaints System. In the absence of such a system, and given the experience of the CM in dealing with procurement, the proposal does not have reasonable grounds. The Ombudsman provided extensive comments on that issue, expressing doubts if the new system would at all constitute a genuinely independent review.

¹ Art. 1.1.3 “*in exceptional and duly justified cases, where disagreement exists, the Inspector General may decide on the admissibility of the complaint*”.

² Procedures 2.3.2.

³ Arts. 4.3.6; 4.3.7, 4.3.8.

The draft Policy puts further **restrictions on complaints related to the investment mandate of the EIB Group**. The consequence of those proposed changes will be to prevent complaints challenging, for example, the compliance of the Board's decisions with sectoral policies, the EIB's statute or mandates given to the EIB.

A third restriction concerns **complaints challenging the legality of EIB Policies** decided by the EIB Governing Bodies. The aim of this provision, like the previous one, is to prevent the CM from dealing with complaints regarding decisions of the EIB governing bodies.

4/ Ensuring the security and protection of complainants

The draft Policy makes a substantial change compared to the current policy: a switch from a presumption of confidentiality for the complainant to a presumption of disclosure. This requires striking a balance between, on the one hand, the security and protection of complainants (for which the risk of retaliation may be a barrier to access the mechanism) and on the other hand the importance of transparency of the CM and, consequently, the public interest in the accountability of the EIB. In order to ensure security and protection of complainants, the presumption of disclosure shall be guided by a do-no-harm principle. It is key for the EIB and the CM to introduce pro-active tools throughout the project cycle to ensure protection of complainants.

5/ Consulting on a revised, consolidated and improved draft Policy

Given the nature and amplitude of changes to the draft Policy that are required to ensure a functioning, effective and credible CM, we strongly urge that a second round of consultation should be opened for all stakeholders, including former complainants.

The consultation should be on one, consolidated Policy, which contains all the relevant provisions to understand the mandate, structure and process of the CM. As explained in a letter to the EIB President in June 2017, signed by 19 CSOs, dividing the process between two documents – the Policy and Procedures – makes it nearly impossible for potential complainants to understand how their complaints will be handled. Many of the provisions that seriously undermine the independence of the mechanism are found in the draft Procedures. Excluding them from the consultation is unjustified and inappropriate.

Conclusion

The signatories of this position paper hope their recommendations will be taken into consideration and reflected in a revised draft of the CM Policy and Procedures. It should be in the interest of all stakeholders involved in this process (the EIB itself, civil society and the European institutions) that the financial arm of the European Union is equipped with a strong independent accountability mechanism, also enabling the bank to learn lessons and improve the quality of its operations. Having a two-tier system, via the role of the European Ombudsman, should not be an argument for the first tier – the CM – not to be independent and functional.

At times when the democratic gap between the European Union and its citizens seems – for a wide set of reasons – to be widening, we consider it crucial that citizens affected by EIB operations have their voices heard and their concerns adequately addressed. A step backwards in this regard would be a disturbing signal sent to citizens in and outside the EU. We are confident that the EIB will therefore seriously address the matters raised in this paper.

We hope to have a fruitful and beneficial collaboration with you and your services in this process and look forward to hearing from you on the points raised in this submission.

Signatories

Accountability Counsel



Bank Information Center Europe



Both ENDS



Center for International Environmental Law



CEE Bankwatch Network



Collectif Camerounais des Organisations des Droits de l'Homme et de la Démocratie



Community Empowerment and Social Justice Foundation (Nepal)



Counter Balance

Eurodad



Focus Association for Sustainable Development



Friends with Environment in Development (Uganda)

International Accountability Project



Jamaa Resource Initiatives (Kenya)



Lumiere Synergie pour le Developpement (Senegal)

Minority Rights Groups



National Association of Professional Environmentalists (Uganda)



NGO Forum on ADB



Oxfam International



OXFAM

Platform London



Polish Green Network



Re:Common



RE:COMMON

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WWF European Policy Office

