

**Briefing for the EIB Board of Directors for the seminar with civil society on 1st
February 2016**

Principles of effectiveness for the EIB Complaints Mechanism Office

Dear Board of Directors,

A year ago in their joint statement to the EIB Board civil society organizations (CSOs) highlighted the need to strengthen the accountability of the European Investment Bank towards European institutions and citizens. CSOs expressed their expectation that the revision of the EIB complaints mechanism would result in genuine and necessary improvements. We hope that the delay in the launch of the consultation process for this revision is the result of efforts to prepare solid and ambitious backgrounds and proposals for a meaningful process.

We would like to take this opportunity to elaborate on the principles underpinning a well-functioning accountability system comprised of the EIB's complaints mechanism and its management and Board. In addition, we would like to encourage the Board to actively participate in this revision process.

Created in 2008, the EIB Complaints Mechanism Office (CMO) is a young accountability mechanism compared to those of other international financial institutions. It was created to enable any stakeholder to lodge a complaint if the person feels the bank failed to comply with its commitments or if it acted unfairly or unlawfully. The scope of those complaints relates to, among other issues, the social, environmental and human rights impacts of projects, access to information and public participation. But the CMO does not bear exclusive responsibility for providing remedy for those harmed by EIB-financed activities. Rather the EIB's Management and Board have an equally important role to play in the complaints process.

Our experience shows that the EIB has not provided the CMO with the mandate or resources to enable it to achieve its mission independently, efficiently and in a meaningful way for those affected by EIB operations, and at the same time, EIB has failed in upholding its own responsibilities to complainants. Therefore we recommend revising the Complaints Mechanism Policy in order to ensure that both the CMO and the EIB meet the effectiveness criteria for non-judicial grievance mechanisms included in the United Nations Guiding Principles on Business and Human Rights (UNGPs)¹ and the European Ombudsman recommendations for **genuine and effective** complaints mechanism dealing with complaints on infringements of fundamental rights submitted by persons individually affected by the

¹ Principle 31 of the UNGPs lists seven relevant effectiveness criteria: legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, and a source of continuous learning. There is an eighth criteria, but that is only relevant for operational level grievance mechanisms.

infringements and also in the public interest,² which was followed by the European Parliament resolution establishing criteria of accessibility, independence, effectiveness and transparency for the recommended mechanism.³

Research and reports presented by CSOs⁴ identify room for improvement in implementing the UNGPs, European Parliament criteria and the European Ombudsman recommendations in the EIB Complaints Mechanism Policy. In particular, the EIB Board and Management must demonstrate their commitment to provide remedy to those impacted by EIB-financed activities by taking actions to meet its own responsibilities and ensure the Complaints Mechanism Office's **legitimacy, accessibility, predictability, equitability and transparency.**

Legitimacy of CMO. Although the CMO was established by EIB's Board of Directors to be independent from operational activities of the bank in order to ensure objectivity in dealing with the complaints, the practice shows that it holds a marginalized position within the EIB. Indeed, its independence is jeopardized by a lack of cooperation from the EIB staff, unclear and internalized selection process of the CMO's staff and insufficient formal relations between the EIB Board of Directors and the CMO in relation to individual cases it deals with. The Board of Directors merely receives an annual report which includes short summaries of cases handled and it does not have a role in approving corrective actions proposed by Management (although its major role is to approve every operation of the Bank). There is also no regular report to the Board on the implementation of commitments or recommendations made in response to the CMO's reports. A more structured and steady engagement from the Board would allow for continuous learning from the mechanism's cases to prevent future harms or non-compliance and improve the quality of the EIB operations. The selection process for the director of the CMO should include external stakeholders, and CMO staff should have pre- and post-employment cooling off periods before leaving or returning to EIB operations.

Although noticeable efforts have been undertaken by the CMO to improve the **accessibility of the mechanism** - such as a flyer available in 24 languages or outreach events with civil society organizations - the existence of the mechanism remains in most cases unknown to those directly affected by EIB financing (even the EIB's role in financing is sometimes unknown, as confirmed by the European Court of

² Special Report of the European Ombudsman in own initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex, November 2013

³ European Parliament Resolution of 2 December 2015 on the Special Report of the European Ombudsman in own initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex, 2014/2215(INI)

⁴ *Towards a reinforced accountability architecture for the European Investment Bank*, June 2015, Counter Balance and *Glass Half Full? The State of Accountability in Development Finance*, January 2016, SOMO (forthcoming).

Auditors in the report it published in November 2015 on the ACP Investment Facility). This situation could easily be improved through requiring the project promoters to inform projects' stakeholders about the EIB financing role and the existence of its grievance mechanism.

The EIB CMO does not always deal with complaints in a **predictable** and **equitable** process. On the one hand, the Office is understaffed which results in delays in handling of complaints. On the other hand the Complaints Mechanism Policy does not provide the complainants with an equal opportunity to provide input on the CMO's Conclusion Report. Similarly, EIB should allow complainants to comment on the its response to the CMO's Conclusion Report and proposed corrective actions, which ensure that those actions would better reflect the needs and interests of complainants. Equal opportunity to state their viewpoint makes for a process that is more likely to truly satisfy complaints and produce lasting resolutions.

Transparency helps to build confidence in the mechanism's effectiveness. Nevertheless, publicly available information is limited for many EIB CM cases. Recently the CMO improved its database of cases and clarified that additional case documents and information would be added, subject to confidentiality and disclosure of information requirements. This is a welcome step forward, and in our opinion the CMO should be equipped with the necessary capacity and resources to improve further its transparency performance.

The upcoming revision process offers the opportunity to address the main shortcomings of the EIB's complaints system and reinforce the accountability and transparency of the EU Bank. Therefore we count on your engagement and oversight over the revision process to create an independent and empowered mechanism and a Management committed to remediating harm and correcting non-compliance. .

Undersigned:

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CEE Bankwatch Network

Centre national de coopération au développement CNCD-11.11.11 (Belgique)

Counter Balance

European Network on Debt and Development, Eurodad

Focus Association for Sustainable Development, Slovenia

Polish Green Network, Poland

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