INVESTIGATION

EU bank accused of muzzling watchdog

By JEAN COMTE
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The European Investment Bank (EIB) is reviewing its "complaints mechanism" in order to improve the way it deals with accusations from people or organisations impacted by EIB-funded projects.

The system, which was created in 2007, allows "third-parties affected by the bank's activities" to submit grievances and obtain explanations.

That includes NGOs and local communities worried about the impact of projects like mines and motorways funded by the EIB, but also private companies that lost an EIB call for tender and want to appeal the procedure.

In 2015, the complaints mechanism - which is also the name of a 12-person-team based at the EIB in Luxembourg - received 56 complaints, of which 49 were considered admissible. The number was broadly similar to the amount in 2014 (60 and 43) and 2013 (63 and 55).

The mechanism is "unique among international financial institutions" and is "effective, independent and well-functioning", the EIB told EUobserver in a statement.

"Over the past years, it has become an effective
instrument for European and non-European citizens to voice their concerns about bank-supported activities", it said.

But the way the mechanism works could change with the current review.

The review process was launched in May, with proposals for an updated mechanism open to public consultation until the end of September. The EIB is expected to adopt the new complaints rules in early 2018.

'Make the system inoperative'

According to the EIB, the exercise is part of a routine practice - obliging the bank to "periodically review its complaints mechanism".

But critics fear that the review process aims to water down the efficiency of the system.

The new policy "would undermine the independence of the mechanism", said Xavier Sol, the director of Counter Balance, a network of NGOs monitoring the EIB and other development banks.

Under the proposed new rules, officials from the mechanism would have to consult with other services of the bank before assessing whether a complaint was admissible.

The proposal also strongly limits the scope of the mechanism, by excluding issues related to the legality of the EIB policies, as well as all cases linked with public procurement.

Finally, the new rules would reduce the mechanism's ability to make recommendations.
The mechanism "reviews the facts in order to establish ... whether there has been a manifest error in the Bank's position or a manifest breach of the rules", the proposal says. "Maladministration review by the complaints mechanism is not intended to substitute the services' professional judgement".

After criticisms from EU Ombudsman Emily O'Reilly, the EIB fine-tuned some details - but did not alter the main issues described above.

Asked by EUobserver, the EIB declined to comment on whether the proposed changes would limit the effectiveness of the mechanism.

**Mounting pressure**

"The bank wants to make the mechanism inoperative", an EU official with good knowledge of the EIB told EUobserver.

According to the source, the EIB's management became hostile to the complaints mechanism a few years ago, after that mechanism issued critical reports regarding the procedure for public procurement and the policy for publication of internal anti-fraud reports.

The bank's management refused to follow up on the recommendation, and both cases were brought by the complainants to the EU Ombudsman - the body ultimately in charge of EU institutions' accountability.

In 2014 and 2015, the Ombudsman took the complaints mechanism's side in both cases, and criticised the EIB.

"The bank's management was furious", the source said.

Observers say that the bank's management has tried to establish control of the complaints mechanism.
"In several cases, we see delays and interference", said Sol, from Counter Balance. "There is a tendency to kill sensitive issues", he added.

In 2012, farmers from Madagascar filed a complaint against the EIB in regard to pollution and population displacement caused by an EIB-supported mine. The Luxembourg-based bank had signed a €215 million loan.

But five years later, the mechanism has not produced any concrete answer to the complaint, forcing the complainant to escalate the file to the EU Ombudsman.

EUobserver learnt that a report on this case has been prepared by the complaints mechanism, calling on the bank's management to monitor the situation better. But it has been blocked somewhere by the upper hierarchy of the bank.

This website has come to understand that four or five other reports are in the same situation.

"It is not official, but we know that there is strong pressure from other EIB departments to water down any sensitive report, or to block and bury them if needed", said another source familiar with how the bank works.

In 2016, several NGOs filed a complaint to the Ombudsman on access to EIB documents.

They said the bank was not cooperating and asked the Ombudsman to check whether the complaints mechanism was working independently.

"We sent our complaint to the mechanism, got a confirmation from the bank which, according to the rules of procedure, implies the admissibility of the
complaint, and then a second letter telling us that it was finally not admissible", Anais Berthier, a lawyer at the NGO legal firm ClientEarth, told EUobserver.

"It raised concerns and questions as to whether there might be some interference inside the bank".

The Ombudsman followed up, and opened an investigation in early 2017. This is still ongoing, just like the Madagascar case.

The imminent departure of the mechanism's head, Felismino Alcarpe, could also weaken the complaints system as he has been responsible for overseeing it since 2008, and is said to be very attached to the independence of the unit.

He will be replaced by Sonja Derkum, another EIB official who currently heads the internal audit division.

She is said to be very strong on auditing, but lacks detailed knowledge of accountability issues.

**Ombudsman safeguard**

Defenders of the complaints procedure now place their hopes in the one entity that could possibly make the EIB turn back - the EU Ombudsman.

In 2008, the Ombudsman and the EIB signed a memorandum of understanding (MoU), which sets out that all EIB-linked complaints should be addressed to the EIB complaints mechanism.

That means that the Ombudsman cannot receive complaints regarding the EIB, except if the complainant is not satisfied with the outcome of the procedure.

It is also possible to go to the Ombudsman if the EIB's
complaints mechanism is found to be too slow in coming to a decision - which happened in the case of the Madagascan mine, or the access to documents request.

That remains quite unusual - between 2013 and 2015, only seven cases out of 154 were referred to the Ombudsman.

But ombudsman O'Reilly could break the agreement if she considers the EIB not to have "an effective internal complaints procedure" - as required by the memorandum.

"For her, the MoU is not sacred", said another EU source.

Defenders of the mechanism hope the threat of breaking the MoU would actually be enough to make the EIB change its ways.

The issue could also become political in the European Parliament, the EU institution that supported the creation of the complaints mechanism in 2007.

But, so far, O'Reilly has refused to take a firm stand on the issue.

"My office continues to monitor the review process to ensure that the Bank has in place 'an effective internal EIB complaints procedure', as set out in our Memorandum of Understanding," she told EUobserver in a written statement.

"Taking into account the result of the review process and the conclusion of our ongoing inquiries, I will then consider the next steps as regards the MoU," she added.
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Final talks on Juncker plan extension
1. JUN, 09:26
The EU institutions have started the last round of discussions to extend the EU investment plan to 2020, with MEPs already asking for a longer-term mechanism.

The discreet banker of Africa development
2. JUN, 08:57
The European Investment Bank has grown, largely unnoticed, into the world's largest lender and borrower, but who is really in charge is anyone's guess.

Diesel cars still dirty, despite huge EU loans
22. SEP 2016, 12:01
The European Investment Bank lent billions to carmakers, in part to clean up diesel cars. But diesel cars are still dirty, prompting questions if the money was well spent.

Anti-EU parties face funding cuts
15. SEP, 17:30
Reforms proposed by Juncker's eurozone vision raises doubts
15. SEP, 15:27
Eurozone states tempered Commission Centre-right MEPs revive anti-NGO funding bid
14. SEP, 09:10
Commission would reduce EU funding for nationalist and ultra-right European political parties by up to 66 percent. MEPs in Strasbourg will vote later today on a transparency report, but amendments introduced in the last minute reduce public accountability and impose EU funding restrictions on NGOs.