

External Review of the EIB Group Complaints Mechanism Final Report

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List of acronyms

ADB	Asian Development Bank
AfDB	African Development Bank
BoD	Board of Directors
CAO	Compliance Advisor Ombudsman
CRP	Compliance Review Panel (ADB)
CSO	Civil Society Organisation
DEG	German Development Finance Cooperation (<i>Deutsche Investitions- und Entwicklungsgesellschaft</i>)
DFI	Development Finance Institution
EBRD	European Bank for Reconstruction and Development
EIBG	European Investment Bank Group
EIF CE	European Investment Fund Chief Executive
EIBG-CM	European Investment Bank Group Complaints Mechanism
EIF DCE	European Investment Fund Deputy Chief Executive
EO	European Ombudsman
EU	European Union
E&S	Environmental and Social
FMO	Dutch Entrepreneurial Development Bank (<i>Financierings-Maatschappij voor Ontwikkelingslanden</i>)
IAM	Independent Accountability Mechanism
IDB	Interamerican Development Bank
IFC	International Finance Corporation
IFI	International Financial Institution
IPAM	Independent Project Accountability Mechanism (EBRD)
MC	Management Committee
MICI	Independent Consultation and Investigation Mechanism (IDB)
MIGA	Multilateral Investment Guarantee Agency
MDB	Multilateral Development Bank
PROPARCO	Private sector financing arm of Agence Française de Développement
SPF	Special Project Facilitator (ADB)
TFEU	Treaty on the Functioning of the European Union

External Review of the EIB Group Complaints Mechanism
Draft Final Report

ToR Terms of Reference

US DFC United States Development Finance Corporation

Executive summary

The EIBG-CM is the EIBG's accountability mechanism. It provides recourse for individuals and groups who allege maladministration by the EIBG in a wide range of its activities.

The Review Team was tasked with responding to a wide range of questions pertaining to the EIBG-CM's mandate, functions, and effectiveness. It assessed the way the EIBG-CM, the EIBG services, complainants, promoters, the Management Committee and Board interact in implementing the current EIBG-CM policy and benchmarked the policy and the EIBG-CM's operations against those of comparable Independent Accountability Mechanisms (IAMs) at other International Financial Institutions (IFIs).

The Review's main findings are:

- The EIBG-CM's mandate is to assess maladministration. This mandate is narrower than that of other IAMs, which focus on both maladministration and negative impacts. On the other hand, the EIB-CM's scope of application includes not only EIBG projects, but also many of the EIBG's non-project and non-governance and management activities. This scope is broader than that of comparable IAMs, which focus on complaints about projects' environmental and social impacts.
- The EIBG-CM's mandate and admissibility criteria result in large number of complaints being admitted by the EIBG-CM. This strains resources and at times diverts attention from the most significant complaints.
- The mandate's focus on maladministration only and not also on negative impacts can make it challenging for the EIBG-CM's compliance function to lay out recommendations on how to address negative impacts. Measures to correct maladministration do not always correct negative impacts which have already been incurred.
- The EIBG-CM has low stature, is insufficiently authorised by the EIB's governing bodies, and has limited visibility within the EIBG. This situation makes it more difficult for the EIBG-CM to operate according to its policy, to be perceived as relevant, and to present findings of maladministration when those findings are contested by the Services.
- The EIBG's strong consensus culture, which seeks to avoid open disagreement, has resulted in exceptionally long consultative processes between the EIB-CM and the Services on EIBG-CM Conclusions Reports, which present findings and recommendations regarding maladministration. Consultative processes on Conclusions Reports averaged 153 working days in 2024, up from 123 working days in 2023 and 60 to 80 working days between 2020 and 2022.
- The established process of seeking agreement between the Services and the EIBG-CM on EIBG-CM recommendations to address maladministration leads to role confusion between the two parties. The EIBG-CM in its compliance function is charged with conducting investigations and to present findings and recommendations. It must do so independently. The Services are the operational units which need to respond with corrective measures.
- In its current authorising environment and interactions with the Services with regard to non-compliance, the EIBG-CM does not have sufficient operational independence. The EIBG-CM's compliance process also limits complainants' opportunity to engage with the

EIBG-CM on Conclusions Reports. Consequently, civil society has limited trust in the EIBG-CM as an accountability mechanism.

- The EIBG-CM has a monitoring function to assess the Services' responses to findings of maladministration, but there is insufficient verification of follow-up measures and very limited public disclosure. Therefore, there is insufficient accountability of the Services for implementation of measures to address maladministration.
- The EIBG-CM has an effective dispute resolution function which is currently under-resourced and underutilised.
- The EIBG-CM has an advisory function but does not systemically provide advice or lessons learnt to the Board and the Management Committee. The EIBG-CM needs to be authorised to exercise its advisory role on systemic issues which emerge from its work on complaints.
- The EIBG-CM is under-resourced in terms of staff.

The Review's assessment is that the EIBG-CM is currently not configured optimally to achieve several of the key objectives of IAMs:

- Performing as a fully trusted and independent public accountability mechanism;
- Responding to allegations of significant impact or harm from project activities in ways that facilitate remedial action by the IFI and/or the project promoter when needed;
- Ensuring the independent operation of the compliance function in determining whether non-compliance has occurred, and in recommending actions to restore compliance when needed;
- Ensuring that operational and corporate Services are accountable to the governing body for responding to findings of non-compliance, and for implementing actions approved by the governing body;
- Facilitating collaborative problem-solving by the promoter and the complainant to expedite remedial action whenever possible; and
- Providing useful advice to Services, the MC and the Board of Directors based on its experience and insights from addressing a significant volume of complaints over time.

The Review Team also considers that other offices within the EIBG are capable of handling all of the non-project complaints that are currently handled by the EIBG-CM, and can do so at least as effectively as the EIBG-CM. The role of the EIBG-CM in handling most of these complaints is largely of a coordinating function. Non-project complaints can be handled in a way similar to the handling of procurement complaints (via a unit in IG).

The Review therefore makes the following primary recommendations to the EIBG:

1. Revise the EIBG-CM Policy to focus its mandate on responding to complaints alleging negative impact from EIBG projects (with a primary focus on environmental and social impacts), and related allegations of non-compliance linked to negative impact. The EIBG-CM could also continue to have responsibility for responding to complaints about access to project-related information.
2. Reassign the responsibility for handling non-project complaints to other offices of EIBG where independence and effectiveness can be equally guaranteed.

3. Strengthen the operational independence of the EIBG-CM's compliance function, by more clearly delineating and limiting the process and timeline for the Services to have input on compliance findings and recommendations; instituting a requirement for Management Action Plans (MAPs) in response to non-compliance findings; and ensuring that disagreements between the EIBG-CM and the Services regarding the adequacy of a MAP in addressing non-compliance are escalated in a timely fashion to the EIB's Management Committee for review and decision.
4. Strengthen oversight by the EIBG Board of Directors by providing the Board with detailed information on MAPs where there was disagreement between the Services and the EIBG CM and where the MC took a decision on the MAP.
5. Provide the dispute resolution function with adequate resources.
6. Provide the advisory function with a stronger mandate and resources to advise the Services, the Management Committee and the Board of Directors on ways to improve environmental and social policies, standards, and safeguards based on its casework (e.g. with a requirement to provide at least one advisory product annually).
7. Refine the main steps in complaint processing, to make them clearer, more predictable, and more effective:
 - Use initial assessment only to determine whether to proceed to dispute resolution, to compliance, or to refer the complaint to the Services for early resolution; do not use initial assessment for fact finding;
 - For complaints referred to compliance, create a time-limited initial compliance assessment procedure to determine whether there is sufficient initial evidence to justify a full compliance investigation, or if there is not sufficient preliminary evidence, close the case;
 - For complaints referred to dispute resolution based on the initial interest of the complainant in reaching a mutually acceptable resolution with the promoter, create a time-limited initial dispute resolution assessment step. If it is determined that dispute resolution is not possible, the case should either be referred to compliance or closed, depending on the complainant's preference;
 - For complaints that proceed to compliance investigations, clarify and limit the process by which the Services are consulted on draft findings and conclusions; require the Services to provide a MAP in response to findings of non-compliance; and require the EIBG-CM to provide comments on the MAP;
 - Ensure that in every case where a Conclusions Report is produced, complainants have the opportunity to provide factual comments on the draft Conclusions Report at the same time as the Services review the draft report;
 - Ensure that the Compliance function independently and substantively monitors implementation of approved actions in MAPs, and that both the Management Committee and the Board regularly review the EIBG-CM's compliance monitoring reports;
 - The EIB-CM is presently under-resourced. Some of the proposed adjustments require more resources, others should lead to some resource savings. Overall, the EIBG-CM might require a modest increase in resources. The question of resourcing should be

further assessed over a 3-year period after the reconfiguration occurs, to ensure that the EIBG-CM has adequate resources to operate effectively in the new configuration.

The Review Team's assessment is that focusing the EIBG-CM's mandate, reinforcing its independence, transparency, rebalancing its functions, and ensuring adequate resources for its operations could substantially enhance its effectiveness and legitimacy as a public accountability mechanism.

Introduction

This report has been prepared under the Terms of Reference (ToR) for the *External Review of the European Investment Bank Group Complaints Mechanism* (see Annex 1 for the Terms of Reference). The review was carried out by an external Review Team composed of three experts, David Fairman, Arntraud Hartmann and Alfonso Querejeta. David Fairman and Arntraud Hartmann bring extensive expertise in the accountability mechanisms of international financial institutions, while Alfonso Querejeta possesses in-depth knowledge of the EIB Group. The Review Team was assisted by Caroline Beaujet and Jennifer McGuinn of Milieu Consulting.

1. Methodology

1. The ToR lists the following elements to be covered within the scope of the review:
 - The EIBG-CM Policy and Procedures, including its mandate and its scope;
 - Alignment of key principles of complaint mechanisms, such as impartiality, transparency, confidentiality and independence, with EIBG-CM Policy and practices;
 - The resources and staffing of the EIBG-CM (including the use of consultants) to assess whether it is adequately staffed to answer the complaints it receives;
 - The efficiency and effectiveness of the complaints-handling, monitoring and quality assurance processes;
 - The accessibility of the EIBG-CM for complainants;
 - The adequacy and quality of existing reporting lines to the EIBG governing bodies;
 - The dissemination, feedback, knowledge management and learning stemming from the EIBG-CM's activities;
 - The collaboration with internal stakeholders and EIBG services;
 - The collaboration with external stakeholders, in particular with Civil Society Organisations (CSOs);
 - The comparison with policies and practices of other International Financial Institutions (IFIs) where benchmarking is relevant.
2. The review uses a combination of data collection and analytical methods. It includes document review of the EIBG-CM Policy and Procedures; internal EIBG-CM guidance documents, EIBG-CM assessment, investigation and dispute resolution reports; monitoring activity, reporting and advisory notes as well as relevant literature and studies. The review panel also assessed a set of EIBG-CM complaints which proceeded through either the compliance or the dispute resolution process. The review panel conducted extensive interviews with EIBG staff (EIBG-CM team, EIBG Services working closely with EIBG-CM and senior management) and external stakeholders, including the European Ombudsman (EO), and Civil Society Organisations (CSOs) both inside and outside the EU.
3. To complement and cross-check its findings, the panel carried out a benchmarking exercise to compare and contrast the set-up and functioning of the EIBG-CM with comparable Independent Accountability Mechanisms (IAMs). The comparator set included IAMs in both multilateral (e.g. Asian Development Bank/CRP-SRP, World Bank/Accountability Mechanism, IFC/Compliance Advisor Ombudsman, EBRD/Independent Project Accountability Mechanism, Inter-American Development Bank/MICI, African Development Bank/ Independent Recourse Mechanism) and bi-lateral financing institutions (e.g., DEG for Germany, FMO for the Netherlands and PROPARGO for France). The benchmarking exercise covered admissibility, assessment, compliance review, monitoring and dispute resolution policies and practices; as well as governance, oversight, outreach and resourcing. It also considered good practices identified by CSOs.
4. A list of the interviews carried out and case studies review is provided in Annex 2.
5. Figure 1 summarises the various evaluation methods and activities that were performed for the Review.

Figure 1. Evaluation methods and activities

Desk review	
	<ul style="list-style-type: none"> ○ Review of EIBG-CM Policy and Procedures ○ Review of EIBG-CM activity reporting ○ Review of EIBG-CM internal guidance documents ○ Review of EIBG-CM advisory notes ○ Review of EIBG-CM assessment, investigation and dispute resolution reports ○ Review of EIBG-CM monitoring activity ○ Review of relevant external literature and studies
Interviews with EIBG staff	
	<ul style="list-style-type: none"> ○ Interviews with EIBG-CM team ○ Interviews with EIBG Services ○ Interviews with EIBG senior management ○ Interviews with former EIBG staff
Interviews with external stakeholders	
	<ul style="list-style-type: none"> ○ Interviews with Civil Society Organisations (both EU and non-EU based) ○ Interviews with European Ombudsman ○ Interviews with complainants and representatives involved in EIBG complaints
Review of case studies	
	<ul style="list-style-type: none"> ○ Review of selected compliance cases ○ Review of selected dispute resolution cases
Benchmarking with IAMs of MDBs and bilateral DFIs	
	<ul style="list-style-type: none"> ○ Benchmarking admissibility, assessment, compliance review, monitoring and dispute resolution policies and practices, outreach and resourcing with comparable IAMs in multi-lateral and bi-lateral financing institutions

2. Setting the stage

6. The EIBG-CM is an important accountability mechanism for the EIB Group. It provides recourse for individuals and groups who allege maladministration by the EIBG in a wide range of its activities. Compliance is currently the core function of the EIBG-CM. Compliance is the process of investigating allegations of maladministration, presenting findings, and recommending action to address maladministration when the EIBG-CM determines it has occurred. The other two functions established in the Policy are Mediation (generally referred to by the EIBG-CM and in this review as Dispute Resolution) and Advisory.

7. The Review Team was tasked with responding to a wide range of questions pertaining to the EIBG-CM's mandate, functions, and effectiveness. In doing so, the Review Team assessed the way the EIBG-CM, the EIBG Group services (hereafter the Services), complainants, promoters, the Management Committee and Board interact in implementing the current EIBG-CM Policy. The Review Team also benchmarked the policy and the EIBG-CM's operations against those of comparable Independent Accountability Mechanisms (IAMs) at other International Financial Institutions (IFIs).

8. The Review's main findings are:

- The mandate, scope, and operations of the EIBG-CM are currently different from those of other IAMs. The atypical features of the EIBG-CM reflect its position within the EIBG as an EU institution, and in particular the EIBG's initial decision to model the mandate and scope of the EIBG-CM in large part on those of the European Ombudsman (EO), an EU-level impartial and independent body, which accepts complaints of maladministration regarding the EIBG and other EU institutions and bodies. Given the evolution of the EIBG-CM and of its relationship to the EO, there is no compelling reason for the EIBG-CM to continue mirroring key features of the EO. On the contrary, the well-established good practices of other IAMs provide a more appropriate basis for refining the mandate, scope, and operations of the EIBG-CM going forward¹.
- The EIBG-CM has a very wide mandate compared to the mandates of other IAMs. The EIBG-CM's mandate focuses on investigating complaints of maladministration related to EIBG projects and to some of the EIBG's non-project governance and management activities. The mandates of other IAMs focus only on responding to allegations of project-related harm and non-compliance with project-related policies.
- As a result of its broad scope and correspondingly broad admissibility criteria, the EIBG-CM admits and responds to a much higher number of complaints (both in absolute terms and as a proportion of its project portfolio) than other IAMs.
- Despite its broad mandate and scope, and the large number of complaints it addresses, the EIBG-CM has low stature and visibility within the EIBG organisational structure. Other IAMs report directly to the Board, while the EIBG-CM reports to the Inspector General². There is a lack of an 'authorising environment' for the EIBG-CM from EIB governance structures and senior management which limits the independence of the EIBG-CM, the trust that some external stakeholders place in it, and its effectiveness as a learning instrument for the EIBG.

¹ See the discussion of the EIBG-CM's mandate (section 3.1.1) for further detail on this point.

² It should be said that the EIBG governance structure does not foresee any function reporting directly to the Board. See section 3.2 on Governance.

- Most complaints are handled by the compliance function of the EIBG-CM. In line with the EIBG-CM mandate, the EIBG-CM focus is primarily on correcting maladministration. Facilitation of remedial action is not an explicit mandate. This limits effectiveness in addressing negative impacts related to maladministration.
- Due to the strong consensus culture in the EIBG, the EIBG-CM engages in lengthy consultation with the EIBG Services over compliance findings and recommendations before they are finalised in EIBG-CM Conclusions Reports. In the past, the consensus culture also has affected the MC's responses to disagreements between the EIBG-CM and the Services which reinforced the long consultation process between the EIBG-CM and the Services. This pattern of interaction has compromised the perceived independence of the EIBG-CM. Complainants and their representatives interviewed by the Review Team expressed grave concerns that the EIBG-CM does not operate independently from the Services. Complainants have also perceived themselves as disadvantaged, because they are not systematically provided with an opportunity to express their view.
- According to the EIBG-CM Policy and Operating Procedures, the MC has an important role to play in deciding corrective actions when the EIBG-CM and the Services cannot agree. The MC was rarely called upon to take a position in past years as disagreements were expected to be resolved through consensus seeking. There was thus limited engagement of the MC. The Review Team has been informed that more recently the MC has been taking a more proactive role on EIBG-CM matters. The Review welcomes a more active engagement of the MC, which is essential for the EIBG-CM to effectively exercise its functions.
- There is no obligation for the Services to provide a Management Action Plan presenting corrective actions to address maladministration findings and project-related harm in response to EIBG-CM findings. The present process where the EIBG-CM provides recommendations for follow-up measures which then need to be agreed with Services, risks confusing the respective roles of the EIBG-CM as an investigator and the Services as the operational units. By adopting a requirement for the Services to produce a Management Action Plan in response to non-compliance findings (see 4.3.4 below), the Services would commit themselves to support well defined corrective measures.
- There is very limited public visibility of the EIBG-CM's monitoring of the Services' actions in response to EIBG-CM findings of non-compliance.
- Dispute resolution is generally effective when used, but it is currently under-resourced.
- The EIBG-CM has an advisory function but does not systemically provide advice or "lessons learned" to the Board and the Management Committee.
- The EIBG-CM consists of a group of professionally qualified staff who are committed to their tasks. In its current configuration, the EIBG-CM is under-resourced in terms of staff and cannot perform all functions as laid out in the EIBG-CM policy.

9. The Review's assessment is that the EIBG-CM is currently not configured optimally to achieve several of the key objectives of IAMs:

- Performing as a fully trusted and independent public accountability mechanism;
- Responding to allegations of significant impact or harm from project activities in ways that facilitate remedial action by the IFI and/or the project promoter when needed;

- Ensuring the independent operation of the compliance function in determining whether non-compliance has occurred, and in recommending actions to restore compliance when needed;
- Ensuring that operational and corporate Services are accountable to the governing body for responding to findings of non-compliance, and for implementing actions approved by the governing body;
- Facilitating collaborative problem-solving by the promoter and the complainant to expedite remedial action whenever possible; and
- Providing useful advice to Services, the MC and the Board of Directors based on its experience and insights from addressing a significant volume of complaints over time.

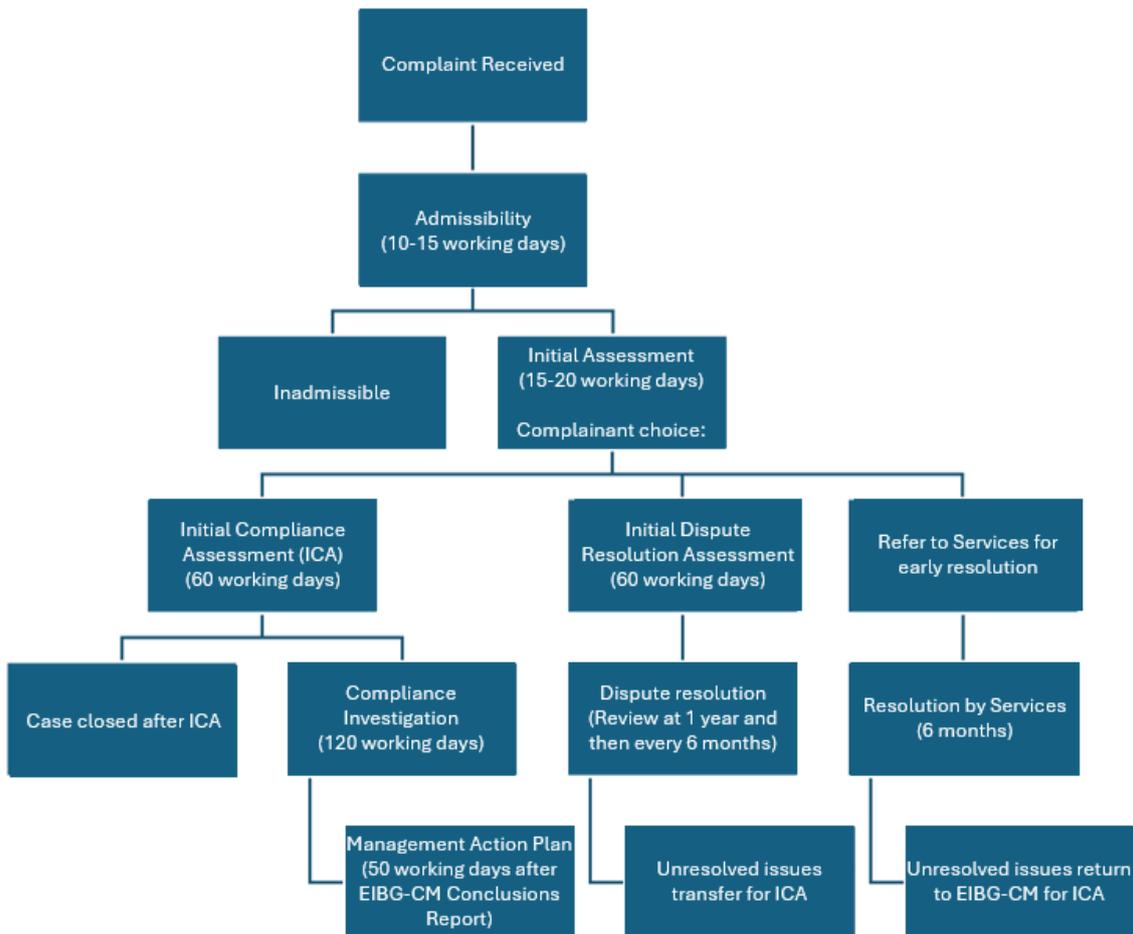
10. The Review Team also considers that other offices within the EIBG are capable of handling all of the non-project complaints that are currently handled by the EIBG-CM, and can do so at least as effectively as the EIBG-CM. The role of the EIBG-CM in handling most of these complaints is largely of a coordinating function. Non-project complaints can be handled in a way similar to the handling of procurement complaints (via a unit in IG).

11. The Review therefore makes the following primary recommendations to the EIBG (additional recommendations are provided in respective sections):

8. Revise the EIBG-CM Policy to focus its mandate on responding to complaints alleging negative impact from EIBG projects (with a primary focus on environmental and social impacts), and related allegations of non-compliance linked to negative impact. The EIBG-CM could also continue to have responsibility for responding to complaints about access to project-related information.
9. Reassign the responsibility for handling non-project complaints to other offices of EIBG where independence and effectiveness can be equally guaranteed.
10. Strengthen the operational independence of the EIBG-CM's compliance function, by more clearly delineating and limiting the process and timeline for the Services to have input on compliance findings and recommendations; instituting a requirement for Management Action Plans (MAPs) in response to non-compliance findings; and ensuring that disagreements between the EIBG-CM and the Services regarding the adequacy of a MAP in addressing non-compliance are escalated in a timely fashion to the EIB's Management Committee for review and decision.
11. Strengthen oversight by the EIBG Board of Directors by providing the Board with detailed information on MAPs where there was disagreement between the Services and the EIBG CM and where the MC took a decision on the MAP.
12. Provide the dispute resolution function with adequate resources.
13. Provide the advisory function with a stronger mandate and resources to advise the Services, the Management Committee and the Board of Directors on ways to improve environmental and social policies, standards, and safeguards based on its casework (e.g. with a requirement to provide at least one advisory product annually).
14. Refine the main steps in complaint processing, to make them clearer, more predictable, and more effective (see the flowchart below for the recommended approach to complaint processing):

- Use initial assessment only to determine whether to proceed to dispute resolution, to compliance, or to refer the complaint to the Services for early resolution; do not use initial assessment for fact finding;
- For complaints referred to compliance, create a time-limited initial compliance assessment procedure to determine whether there is sufficient initial evidence to justify a full compliance investigation, or if there is not sufficient preliminary evidence, close the case;
- For complaints referred to dispute resolution based on the initial interest of the complainant in reaching a mutually acceptable resolution with the promoter, create a time-limited initial dispute resolution assessment step. This step should aim to clarify the core interests and concerns of the parties, develop and agree on a dispute resolution process, and agree on a mediator/facilitator. If it is determined that dispute resolution is not possible, the case should either be referred to compliance or closed, depending on the complainant's preference;
- For complaints that proceed to compliance investigations, clarify and limit the process by which the Services are consulted on draft findings and conclusions; require the Services to provide a MAP in response to findings of non-compliance; and require the EIBG-CM to provide comments on the MAP³;
- Ensure that in every case where a Conclusions Report is produced, complainants have the opportunity to provide factual comments on the draft Conclusions Report at the same time as the Services review the draft report.
- Ensure that the Compliance function independently and substantively monitors implementation of approved actions in MAPs, and that both the Management Committee and the Board regularly review the EIBG-CM's compliance monitoring reports.
- The Review Team's assessment is that focusing the EIBG-CM's mandate, reinforcing its independence, transparency, and rebalancing its functions could substantially enhance its effectiveness and trust as a public accountability mechanism.
- The EIB-CM is presently under-resourced. Some of proposed adjustments require more resources, others should lead to some resource savings. Overall, the EIBG -CM might require a modest increase in resources. The question of resourcing should be further assessed over a 3-year period after the reconfiguration occurs, to ensure that the EIBG-CM has adequate resources to operate effectively in the new configuration.

³ See section 3.2 on Governance.

Figure 2 Recommended revised EIBG-CM process steps

3. Mandate, Scope and Oversight

3.1. Mandate and scope

3.1.1. Mandate

12. The mandate or purpose of the complaints mechanism is defined in the Preamble of its Policy as managing complaints of any kind to enhance the EIBG's performance and products. The mandate is presented as part of a two-tier mechanism composed of an internal tier – the Complaints Mechanism Division (the EIBG-CM) – and an external one – the European Ombudsman. It is also conceived as a public accountability tool which enables alternative and pre-emptive resolution of disputes between complainants and the EIBG. In addition, the EIBG-CM assists the EIBG by advising on possible improvements to the implementation of its activities, for the common purpose of good administration. The EIBG-CM primarily focuses on the objective of enhancing the EIBG's performance and products through managing the complaints received.

13. The EIBG-CM's mandate does not appear to be clearly or consistently understood across EIBG Services or external stakeholders: some see it as a redress mechanism, aimed at providing tangible relief or solutions for those who have been wronged; others see it more as an internal accountability mechanism, aimed at managing reputational risk to the bank. Importantly, the narrowly worded mandate does not seem to encompass the task of the dispute resolution

function (referred to in the Policy as “mediation” but in EIBG-CM practice as “dispute resolution”). Dispute resolution is a function established as part of the EIBG-CM, but dispute resolution does not establish or address maladministration. The narrowly worded mandate therefore does not seem fully aligned with the activities that are also foreseen in the policy and conducted by the EIBG-CM.

14. The mandate also lacks the specificity which is found in other policies of IAMs. Other IAMs provide for affected people or communities to seek redress when they believe that an IFI-funded project has caused harm or disregarded IFI policies. It is a narrower and more specific mandate than the broad maladministration mandate of the EIBG-CM.

15. This difference in mandates may be rooted in the fact that the EIBG is both an international financing institution and a body of the European Union. The latter implies a link to the European Ombudsman (EO), which is established by the Treaty on the Functioning of the European Union (TFEU) to receive complaints from any citizen or legal person in the EU concerning instances of maladministration in the activities of EU institutions. Indeed, the purpose and scope of the EIBG-CM is modelled on the EO: its Policy and Procedures mirror the statute and implementing provisions governing the EO duties⁴. As such, the EIBG-CM’s role is to ‘ensure the right to be heard and right to complain of EIBG stakeholders, thus giving voice to their concerns regarding maladministration’⁵. The Policy defines maladministration as ‘poor or failed administration’ in relation to the performance of the EIBG against its own rules and procedures. In this sense, the EIBG functions like an internal ombudsman for the EIBG. This is also reflected in the wide scope of complaints the EIBG-CM handles (see discussion in section 4.1.1).

3.1.2. Scope

16. The scope of complaints accepted by the EIBG-CM is unusually broad. The EIBG-CM is not limited to project-related complaints. It can also receive complaints related to access to information, procurement of EIBG’s own contracts, customer relations, governance and human resources⁶. As with the EIBG-CM’s mandate, this seems to stem primarily from the approach taken by the EO. Given the broad scope, the number of complaints received by the EIBG-CM is very high. The number of cases which the EIBG-CM handles is significantly higher than the number of cases handled by complaint mechanisms of other MDBs (see Table 1). The percentage share of complaints admitted in relation to the amount of projects approved for financing amounts to 7 % for the EIBG. In comparison, the number of complaints admitted amount to around 3 % of projects approved at the IDB, the ADB and the IFC, and to less than 1 % in other large MDBs, such as the World Bank.

⁴ Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman’s duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, European Commission, Euratom.

⁵ EIBG-CM Policy Preamble.

⁶ Human resources complaints are limited to external candidates. Internal HR issues are managed by HR.

Table 1. Number of complaints, size of lending program, and number of projects approved for selected IAMs (2013–2022)

	EIBG	ADB	AfDB	EBRD	IDB	IFC	WB
Number of complaints admitted (E&F project-related)	314	116	17	22	32	112	48
Number of projects approved	4854	3547	2675	4042	1155	3370	5639
Size of lending programme	€ 688 bn	\$312 bn	\$81 bn	\$116 bn	\$131 bn	\$199 bn	\$491 bn
Average commitment per project	€142 m	\$88 m	\$30 m	\$29 m	\$113 m	\$59 m	\$87 m
Rate of admitted complaint per project (10-year average)	7%	3%	1%	1%	3%	3%	1%
% admitted that go to DR	9%	82%	53%	36%	87%	42%	6%

Source: EIBG-CM internal registry database, World Bank External Review report 2024 (Appendix C/ IAM Comparison Data).

Notes: 1. The data provided is for 2013-2022, except for EBRD where it is 2015-2022. 2. The EIBG has a DR function since 2018 only. 3. The WB has a DR function since 2021 only. 4. EIB data is taken from the EIBG-CM internal registry database, filtering out cases not directly submitted to the EIBG-CM. 5. Several complaints may be registered with the same allegations for the same project. This practice is followed by most IAMs, with the exception of the WB.

17. While stakeholders such as Civil Society Organisations (CSOs) welcome the open access and broad scope of the EIBG-CM, the diversity in the type of complaints submitted means the EIBG-CM team needs to spread its resources across different areas and types of procedures⁷.

18. However, the EIBG-CM does not currently handle all complaints submitted to the Bank. Some very substantive complaints fall outside its remit, or the responsibility is shared between the EIBG-CM and other EIBG Service:

- **Procurement complaints:** Project-related procurement complaints, which fall under the responsibility of an independent service under the supervision of the Inspector General due to their technical nature. However, the EIBG-CM is competent to handle complaints related to the EIBG's non-project procurement.
- **HR complaints:** Staff matters complaints do not fall under the remit of the EIBG-CM but of the HR services of the EIBG or the EIF. However, complaints from candidates applying for a position at either of these institutions are the responsibility of the EIBG-CM⁸.
- **Governance:** Complaints related to the legality of policies decided by the governing bodies of the EIBG or the EIF fall under the Secretary General; however, complaints related to the implementation of these policies on governance matters may be within EIBG-CM scope.

19. These splits do not favour an optimal allocation of resources. It seems reasonable for a single service to handle all procurement or staff matters and in general, to handle complaints not related to an EIBG-financed project, as long as effectiveness and independence can be guaranteed⁹. Governance related complaints associated to project complaints alleging non-compliance with EIBG policies should remain the competence of EIBG-CM.

⁷ This has resulted in significant delays. The EO has accepted a number of complaints on the time spent by the EIBG-CM in producing a final report. On this, see EO complaints 2288/2011, 1739/2016; 146/2017 and 814/2017 (see discussion in section 3.1.3).

⁸ Paragraphs 4.3.2 to 4.3.8 of EIBG-CM Policy.

⁹ This is *de facto* current practice at EIBG. See Complaints before the EO 1015/2021, 611/2022 on ethics rules applicable (revolving doors) to members of the Management Committee or Complaint 1252/2020 on

20. EIBG-CM may retain residual capacity, at the request of the President or the Inspector General, to exceptionally handle a complaint outside the scope of project financing. It could also maintain its current capacity to coordinate relations with the EO.

3.1.3. Relationship with the European Ombudsman

21. The two-tier approach regarding the EO should be reviewed. By letter dated 7 December 2023, the EO announced its formal withdrawal from the Memorandum of Understanding with the EIBG, since this no longer reflects – in the EO’s words - the current practice of the EO. The EO also requested that any reference to the two-tier approach existing in the EIBG-CM Policy be removed. There are several reasons for this direction from the EO. First of all, the two-tier approach regarding the EIBG-CM is unique in the EU institutional framework. As the EO representatives explained to the Review Team, the EIBG is the only EU body to have entered in this type of agreement with the EO. In addition – and in the opinion of the EO representatives - the two-tier approach may unnecessarily lengthen the complaint process¹⁰. The EO also requested the review of the EIBG Transparency Policy specifying that public access complaints remain admissible before the EO following the adoption by the EIBG Group of its confirmatory decision, whether express or implied.

22. The majority of the complaints about the EIBG analysed by the EO relate to transparency. For these cases, the EO favours direct handling of such complaints within the EO without previous involvement of the EIBG-CM. Complaints primarily related to aspects of EIBG Transparency Policy and with no project-related issue could therefore also be handled by the services of the Secretary General. Complaints related to the environmental and social impacts of EIBG projects should be the responsibility of the EIBG-CM.

3.1.4. Comparison with other IAMs

23. While the EIBG is an EU entity, it is also a development finance bank. With around 10 % of its financing directed outside the EU¹¹, much of its operations are similar to those of the other MDBs and bilateral DFIs; roughly 70 % of project complaints received by the EIBG-CM originate from outside the EU.

24. The EIBG-CM is a member of the IAM network (IAMnet), which provides support and linkages between the complaint mechanisms of IFIs and develops good practice standards¹². The EIBG-CM thus operates in a community of IAMs which increasingly converges in practices and standards. IAMs are encouraged to build systems of ‘mutual reliance’ where borrowers are only required to apply the environmental and social safeguard policies of the lead financial institution and where possible in future, complaints related to such projects might also be handled by the IAM of the lead financial institution, either fully or partially. Such systems of ‘mutual reliance’ call for an alignment of standards and practices.

25. Other IAMs have a significantly narrower mandate than the EIBG-CM. They only focus on project-related complaints and require either allegations of negative environmental or social impacts caused by the project or a policy violation related to the project. A few IAMs have a broader policy scope and allow complaints alleging instances of non-compliance regarding all

access to the minutes of the Management Committee. In all these cases, the complaint was directly presented to the EO. Interestingly, in the latter complaint, another controversy arose subsequently affecting the governance of the bank. This time regarding the review of the decisions of the Board of Directors, but related to the same project and raised by the same complainant. This controversy, which debated the applicability of the Aarhus Convention to the specific request of the complainant, was ultimately resolved by a decision of the Court of Justice of the EU. The EIBG-CM was not involved.

¹⁰ See discussion in section 4.1.

¹¹ <https://www.EIB.org/en/about/key-figures/timeline/index>

¹² [Independent Accountability Mechanisms Network \(IAMNet\)](#)

project-related policies (see for example ADB/CRP, World Bank/Accountability Mechanism, and IEIBG-CM/DEG-PROPARCO-FMO). Some IAMs also allow complaints regarding failures to disclose information about projects or investments (EBRD//IPAM).

26. The mandate of these IAMs is to (i) facilitate remediation of negative impacts caused by the project (using dispute resolution with the promoter and complainant, and/or by recommending management action to address the impacts of non-compliance); (ii) assess compliance with project-related policies (generally focused on the extent to which the institution conducted due diligence and project supervision in accord with its policy commitments and associated procedural requirements) and, (iii) provide a source for institutional learning to avoid reoccurrence of non-compliance (maladministration), therefore improving the performance of development finance lending of the institution.

Table 2. Provisions of comparable IAMs on Policy Scope

IAM	Scope
EBRD/IPAM	<p>Para. 2.1 IPAM Policy</p> <ul style="list-style-type: none"> (i) Complainants (individual or organisations) believe they are (or are likely to be) negatively affected by a project. (ii) IPAM will also accept and consider the registration of requests submitted by organisations that are not directly or personally affected by a Project. In these cases, IPAM will take the circumstances of the request into account, and proceed with registration if the request presents satisfactory information on (a) proof of efforts made by the requesters to engage with project-affected people on the issues of concern, if such project-affected people exist, and any feedback provided by project-affected people in relation to the request; and (b) the reasons preventing project-affected people from submitting a request themselves. <p>Policy Scope: Environmental and social policies, access to information policy (project-specific provisions only).</p>
World Bank Accountability Mechanism	<p>Complainants must allege harm in relation to a World Bank financed project.</p> <p>Policy Scope: All World Bank policies can be subject to a complaint.</p>
IFC/CAO	<p>Complainants are or may be affected by the harm raised in the complaint.</p> <p>Policy Scope: Environmental and social policies-IFC Performance standards, Project specific access to information policy, any Board approved E&S commitments</p>
AFDB/Independent Review Mechanism	<p>Policy Scope: AFDB Access to Information Policy, E&S Integrated Safeguard System</p>
ADB/CRP and SPF	<p>Complainants must be directly, materially and adversely affected by an ADM-assisted project</p> <p>Policy Scope: ADB operational policies and procedures whereby the Board decides whether a policy is an operational policy subject to compliance review. The ADB Operations Manual specify which policies can be reviewed.</p>

DEG-FMO- PROPARCO/Independent Complaint Mechanism	<p>The Complainant must be affected or likely affected by the financed project</p> <p>The Complaint must contain allegations of (potentially) substantial (in)direct and adverse impacts or risks.</p> <p>Policy Scope: for DEG not clearly defined, for FMO relevant policies are listed in policy, including sustainability, environmental and social policies, and human rights obligations; for PROPARCO E&S Principles of the AFD Group</p>
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Source: Respective IAM policies

27. A paper titled ‘Good Policy Paper’ prepared by CSOs involved with complaint mechanisms emphasises the importance of a clear mandate¹³. The mandate should capture the two core functions of preventing harm and helping to ensure remedy in case negative impacts and achieving ongoing improvement to the financial institution¹⁴. A good practice example of a mandate capturing these dimensions is the CAO Policy (paras. 4-5), which states:

“As the independent recourse and accountability mechanisms for IFC/MIGA, CAO facilitates the resolution of complaints related to the Projects and Subprojects, undertakes investigations of IFC and MIGA’s environmental and social compliance, fosters public accountability for their commitments, and enhances the environmental and social performance of IFC/MIGA (...). CAO’s mandate is: (i) facilitate the resolution of Complaints from people who may be affected by projects or sub-projects in a manner that is fair, objective, and constructive, (ii) enhance the environmental and social outcomes of projects or subprojects, and (iii) foster public accountability and learning to enhance the environmental and social performance of IFC/MIGA and reduce the risk of harm to people and the environment.”

28. This review recommends that EIBG change the mandate and scope of the EIBG-CM to focus on project-related complaints, primarily regarding the environmental and social impacts of projects and EIBG compliance with project-related policies, procedures and standards relevant to these impacts. This scope would align the EIBG-CM with the mandate and scope of other IAMs. This is important for several reasons:

- (i) it could reduce the number of complaints which would allow the EIBG-CM to operate more effectively and focus on the recommended adjustments presented in this report;
- (ii) it would provide the EIBG-CM a mandate to facilitate access to remedy in cases of non-compliance (maladministration) with EIBG project-related policies which led to negative impacts. The present focus on maladministration makes it difficult for the EIBG-CM to insist on facilitation on remedial actions as Services often argue that the EIBG-CM mandate only provides for a focus on maladministration but not on facilitation of remedial actions;
- (iii) it would strengthen the public accountability as a stronger focus on facilitation of remedial actions would put the impacts on affected people at the centre, rather than only looking at wrongdoing from the EIBG (maladministration);
- (iv) by aligning the EIBG-CM with the mandate and scope of other IAMs, the EIBG would be better positioned to work in partnerships with other MDBs and IAMs under the

¹³ See Accountability Counsel et. al, Good Policy Paper, Guiding Practice from the Policies of Independent Accountability Mechanisms, January 2024.

¹⁴ See Ibid., page 13.

‘mutual reliance initiative’ where IFIs intend to work much more in partnership and delegate more responsibilities to the lead financial institution.

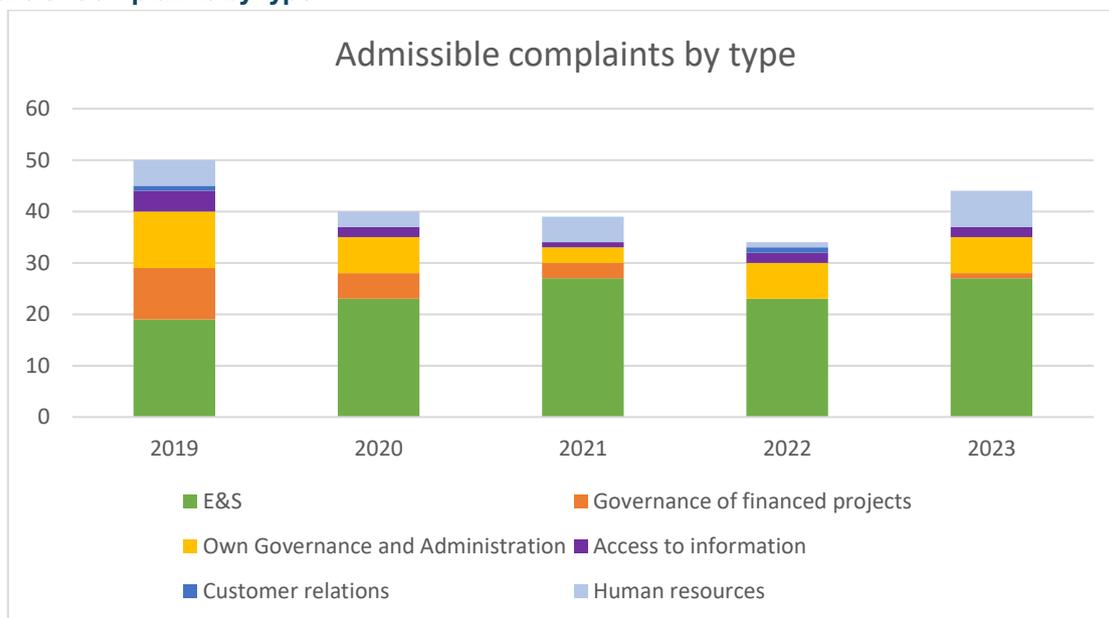
29. Making such adjustments to the scope of the EIBG-CM would not present a significant departure from actual practice. Most complaints filed with the EIBG-CM today already relate to projects outside of the EU (see Table 3). Moreover, most complaints already focus on violations of environmental and social standards (see Figure 3). The EIBG-CM today in practice is already a mechanism which primarily handles complaints which focus on project related maladministration, with a strong focus on environmental and social standards.

Table 3. Project-related complaints as share of total complaints and by geographical regions

	2019	2020	2021	2022	2023	Total	Note
Complaints admitted	50	40	39	34	44	207	
Project-related complaints	26	29	31	25	29	140	68% of complaints admitted
EU projects	8	13	14	4	2	41	29% of project-related complaints
Non-EU projects	18	16	17	21	27	99	71% of project-related complaints
Eastern neighbourhood	6	3	1	0	0	10	
Southern Neighbourhood	1	4	4	11	20	40	
Western Balkans	3	3	3	4	0	13	
Asia	4	2	3	1	0	10	
Latin America	0	0	3	1	2	6	
Sub-Saharan Africa	4	4	3	3	3	17	
Other	0	0	0	1	2	3	
Other complaints	24	11	8	9	15	67	

Source: EIBG-CM annual reports 2019 to 2023

Figure 3. Complaints by type



Source: EIBG-CM Annual Report 2023

30. A focus on project-related impacts and related policies would also complement the EO process. Most complaints filed with the EIBG-CM relate to environmental and social matters. The EO lacks capacity and expertise on environmental matters and does not assess

maladministration with environmental and social standards¹⁵. A focus of the EIBG-CM on these complaints will more effectively complement the internal and external framework of complaints management at EU level¹⁶.

31. The review panel acknowledges that any complaints no longer handled by the EIBG-CM would need to be handled elsewhere within the EIBG, and that there are trade-offs involved, including the need to coordinate procedures elsewhere in the EIBG, to ensure adequate capacity to manage complaints in accordance with international good practice, and to communicate the reasons for the change effectively to stakeholders.

Recommendations: Mandate and scope

1. Redefine the mandate of EIBG-CM to:
 - facilitate access to remedy to address negative impacts;
 - assess compliance with project-related policies and procedures, primarily environmental and social policies, as well as project-related information disclosure;
 - provide for an institutional source of learning to avoid recurrence of noncompliance and related negative impacts;
 - support improvements in the development impact of lending; and
 - foster public accountability.
2. Transfer complaint handling responsibilities for non-project related complaints to other EIBG units.

3.2. Governance

3.2.1. Structural position of the EIBG-CM in the EIBG's governance

32. The IAMs of comparable IFIs report directly to their respective Boards (see Table 4). At the EIBG, the responsibilities typically assumed by most Boards of Directors of IFIs are distributed within the EIBG among three Governing Bodies. Two have decision-making powers: the Board of Directors (BoD) and the Management Committee (MC), while the third, the Audit Committee (AC), operates independently from the other two and is directly accountable to the Board of Governors – composed of the ministers of the 27 Member States.

33. The respective competences of the BoD and MC are defined in the Bank's Statute and in the Rules of Procedure adopted by the Board of Governors. For example, the BoD approves project financing operations, oversees risk control (a function also performed by the Audit Committee), and sets the Bank's general policies. In this last case, the BoD delegates implementation powers to the MC. The MC acts as the EIBG's "permanent collegiate executive body," and is supervised by its non-resident Board of Directors¹⁷.

34. Under the Complaints Mechanism Policy approved by the EIB Board of Directors in November 2018 and the EIBG-CM Operating Procedures, the EIBG-CM sends its Conclusions Reports to the MC for information. If the EIBG-CM and the Services do not agree on the recommendations for corrective actions presented in the Conclusions Report, the EIB Inspector

¹⁵ In a decision of 27 April 2022 (EO Complaint 2030/2020/NH) the EO recognised that 'the role of the EO is not to assess how the promoter prepared the EIA but rather how the EIBG ensured that the assessments were in accordance with its rules for financing (...) and whether the EIBG provided the complainants with a reasonable reply and whether there is a procedural or manifest error of assessment in the EIBG's own assessment'.

¹⁶ Moreover, the marked preference of EO for conducting file-based reviews rather than on-site investigations is hardly compatible with facilitating access to remedy, because that access is facilitated primarily through engagement with the promoter.

¹⁷ See the EIBG Web page for the Management Committee: <https://www.EIBG.org/en/about/governance-and-structure/statutory-bodies/management-committee/index>.

General will submit the final Conclusions Report and the Services' Responses to the MC for decision. The MC then will decide whether or not to apply the EIBG-CM's recommendations and corrective actions (see para. 1.8.1 EIBG-CM Procedures and para.6.2.6. EIBG-CM policy). The EIBG-CM also sends its Conclusions Reports to the BoD and AC.

35. The EIBG is also subject to external accountability mechanisms in ways that other IFIs are not (most other IFIs possess sovereign immunity). These mechanisms include the European Court of Justice, which can not only annul the Bank's decisions but also hold it liable for damages, as well as an independent anti-fraud office (OLAF), the European Public Prosecutor Office (EPPO), and the independent EO¹⁸.

36. Though these external forms of accountability are important, they are not substitutes for the EIBG-CM as an operationally independent accountability mechanism within the EIBG. The purpose of such a mechanism is to provide timely and effective responses to complaints, using both its "embedded" relationships with management and operational counterparts in the institution, and its authority to raise issues of non-compliance to the attention of a governing body. In turn, the governing body has a responsibility to hold management and operations counterparts accountable for providing an effective institutional response, and to resolve disagreement between the accountability mechanism and its counterparts when necessary.

3.2.2. Roles of the MC and the Board in responding to EIBG-CM non-compliance findings

37. The EIBG-CM policy and procedures provide that, if needed, follow-up actions are agreed upon between the Services and the EIBG-CM. The MC has an important role in deciding on corrective actions to be taken in cases where the EIBG-CM and the Services cannot agree on corrective actions. Such corrective actions are important as they commit the institution to address maladministration and negative impacts. The Review has found the MC has tended to respond to disagreements between the Services and the EIBG-CM on non-compliance issues primarily by encouraging the EIBG-CM and the Services to reach agreement, rather than by making an independent decision when there is disagreement.

38. The Review has been informed that the MC is becoming more proactive in addressing disagreement between the EIBG-CM and the Services on maladministration findings and recommendations. In the case of the Zenata Urban Development Project in Morocco, the MC took a strong interest in the non-compliance findings issues raised by the EIBG-CM in its Conclusions Report and requested the Services to prepare an action plan presenting corrective measures to address the non-compliance findings. The Board also engaged with the Inspector General on this operation, showing an interest for the issues to be addressed.

39. Recent changes in the MC's role notwithstanding, the consensus-seeking culture has created a situation where the EIBG-CM's compliance team spends a great deal of time consulting on the contents of its Conclusions Reports with the Services, in order to minimise disagreement with the Services on the final report¹⁹. This is counter to generally accepted practice in other IFIs, where disagreement between the IAM and management on non-compliance findings and recommendations is accepted. The EIBG-CM is an investigative body which – just as other IAMs –

¹⁸ The EO has reviewed EIBG actions on numerous occasions and, in some cases, has concluded that there was maladministration by the EIBG (from 2017 onwards see Cases 146/2017, 814/2017, 805/2018, 611/2022 or 2252/2022 where the EO has considered whether there was maladministration by EIBG). Similarly, the Court of Justice of the European Union has reviewed EIBG decisions related to the Bank's non-contractual liability (Cases C-370/89 and T-461/08) and its obligations under the Aarhus Convention (Cases C-212/21 P and C-223/21 P).

¹⁹ In Complaints 146/2017/DR and 814/2017/DR the EO recognised the link between acting independently and resolve the matter as quickly as possible, submitting it to the Management Committee if necessary. In both cases the EO found maladministration as the EIB took six and five years respectively to finalise its investigations on the complaints.

may present findings which are not supported by those who are investigated. While reaching an agreement is very desirable, differences of views on findings and follow-up actions are inherent to such a process. In other IFIs, governance bodies are expected to review a proposed management response side by side with the IAM's findings and recommendations. The governing body is then supposed to determine whether the proposed response is adequate, and if not, direct the IFI's management to adjust the response.

40. Currently, the EIBG's Board receives semi-annual reports from the EIBG-CM, but those reports include only brief summaries of Conclusions Reports. They are not regularly informed of cases where there was disagreement between the Services and the EIBG-CM on findings or recommendations, or of the MC's response in those cases. In contrast, the Boards of comparable IFIs do review management action plans stemming from of IAM findings of non-compliance and determine the adequacy of proposed management actions (see Section 4.3.4).

41. Given the EIBG's two-tier governance structure, the Board of Directors should also be aware of significant non-compliance findings and recommendations, and of the response of the Services and the MC to those findings and recommendations. While recognising that the MC is the primary governance and management body responding to the EIBG-CM's Conclusions Reports, the Board should have insight into the way that the MC, the Services and the EIBG-CM are interacting, particularly when there are disagreements between the EIBG-CM and the Services on findings and recommendations.

3.2.3. Seniority of the EIBG-CM Head

42. The heads of IAMs are typically on a very senior level. Most IAMs are on hierarchical levels comparable to Vice Presidents (World Bank IPN/AM, ADB/CRP, IFC/CAO), which corresponds to the Director General Level at the EIBG. Even accepting the important differences in structure between the EIBG and comparable IFIs, the EIBG-CM is located hierarchically at a lower level than comparable IAMs (see Table 4). The Head of the EIBG-CM is a divisional chief, two levels below the Directors General, who are the senior functional level at EIBG. The EIBG-CM has had consistent support from the Inspectors General to whom it reports in carrying out its functions. Nonetheless, the lower level of the EIBG-CM Head creates an institutional reality of lower authority within the EIBG than that of the Services whose functioning it is authorised to investigate and whose noncompliance with EIBG standards and requirements it is meant to address.

43. In addition, most other IAMs also have procedures for the appointment of IAM heads, their tenure, and restrictions on subsequent engagement in the IFI structures (typically a prohibition on employment by the IFI after completion of their terms). The EIBG-CM does not have such procedures with regard to the EIBG-CM Head.

Table 4. Reporting relationships of IAMs

	EIBG	WB	IFC	EBRD	IDB	AfDB	ADB	IEIBG-CM
IAM name	Complaints Mechanism	Accountability Mechanism (consisting of Inspection Panel and Accountability Mechanism Secretariat)	Compliance Advisor Ombudsman	Independent Project Accountability Mechanism	Independent Consultation and Investigation Mechanism	Independent Review Mechanism	Accountability Mechanism (consisting of Compliance Review Panel and Special Project Facilitator)	Independent Complaint Mechanism
Hierarchy	Reports to the Inspector General. EIBG-CM is a division under Director General	Reports directly to the Board. Independent Unit. Inspection Panel substantively independent from Accountability Mechanism Secretariat	Reports directly to the Board. Independent Unit.	Reports directly to the Board. Independent Unit.	Reports directly to the Board. Independent Unit.	Reports directly to the Board. Independent Unit.	CRP Panel reports directly to the Board. Independent Unit. SPF head reports to President	Independent Three Member Panel reports to Management Committees and to the Boards of PROPARCO, DEG and FMO
Head	Head of the Complaints Mechanism	Accountability Mechanism Secretary and three Member Inspection Panel headed by an Inspection Panel Chairperson	Director General (Ombudsman)	Chief Accountability Officer	MICI Director	Director of Compliance Review and Mediation Unit	Compliance Review Panel coordinated by CRP chair for compliance review. Director of SRP for Dispute Resolution	Independent Expert Panel formed of three international specialists. No head.
Seniority	Division Head	Accountability Mechanism Secretary and Chairperson Inspection Panel on Vice Presidential level	Vice President level	Managing Director Level	The MICI Director holds an executive level position.	Senior Management level	Head of Compliance Review Panel Vice Presidential level, two Panel Members consultant status on senior management level	Three panel members consultant status on senior management level

Source: Websites of respective IAMs and IAM operating procedures and documents

3.2.4. EIBG-CM's Advisory role in relation to the MC and the Board

44. Beyond reporting on individual cases, the EIBG-CM Policy establishes an Advisory function, with a mandate to provide “written advice to the EIBG Management and/or the EIF CE/DCE internally on broader and systemic issues related to policies, standards, procedures, guidelines, resources and systems, on the basis of lessons learned from complaints.” In practice, the EIBG-CM has provided limited advice to the different Directorates Generals and to the EIBG Governing bodies, and most of that advice has been case-specific, rather than drawing broader lessons. The EIBG-CM's limited efforts to provide broader advice have been challenged by the Services and have not generated significant responses from the MC. Unlike other IAMs, the EIBG-CM does not have a mandate to provide advice to the Board.

3.2.5. Conclusions on governance issues

45. The consensus culture of the EIBG has limited the effectiveness of the EIBG-CM as a mechanism for determining maladministration and making recommendations for corrective action. In addition, the EIBG-CM has not provided regular advice based on lessons learned from the many complaints the EIBG-CM processes. Concerns about the EIB-CM's independence and effectiveness have been voiced repeatedly by external stakeholders (particularly CSOs focused on advocacy for project-affected stakeholders and those focused on governance of EU institutions and IFIs).

46. This review recognises that the EIBG has a non-resident Board that engages in a large number of activities, and that the MC likewise has a very wide span of responsibilities on a daily basis. Nevertheless, to be effective, the EIBG-CM requires direct engagement with the governance level of the institution.

47. The review does not recommend that the EIBG-CM adopt the governance structure that most other IAMs have: reporting directly to the Board rather than to the MC. It does recommend that the MC continue the recent trend of active engagement with the EIBG-CM; hold the Services accountable for producing Management Action Plans in response to EIBG-CM non-compliance findings; and decide on the adequacy of those MAPs when there is disagreement between the Services and the EIBG-CM. The proposed revisions in the approach and process of the EIBG-CM that are presented later in this Review would be conducive to such stronger engagement. The Review also recommends that the Board have more detailed and comprehensive information about the EIBG-CM's non-compliance findings, the Services' responses, and the role of the MC in resolving disagreements and closing gaps between the EIBG-CM and the Services on non-compliance issues. Finally, it recommends that the Advisory function of the EIBG-CM be authorized to provide advice to the MC and the Board.

Recommendations: Governance

3. Consider ways to raise the stature of the EIBG-CM within the EIBG's governance structure.
4. Raise the visibility of the EIBG-CM as an important accountability function on the EIBG website, and in internal and external communications by the Board, Management Committee, and the DGs of the Services.
5. Revise the EIBG-CM Policy to:
 - Introduce conflict of interest guidelines on the hiring or subsequent employment or engagement of the Head of the EIBG-CM within the EIBG.
 - Make it explicit that the MC has the responsibility to ensure that the Services respond to EIBG-CM non-compliance findings and recommendations by proposing remedial action, unless they fundamentally disagree with the findings and/or recommendations.

- Make it explicit that the MC has the responsibility to resolve disagreements between the Services and the EIBG-CM. (This responsibility is currently specified in the EIBG-CM Procedures (para.1.8.2) but not in the Policy).
 - Require the Services to produce a Management Action Plan in response to EIBG-CM non-compliance findings and recommendations and require the MC either to endorse the proposed actions or direct the Services to take additional steps to address noncompliance (see sections 4.3.3 and 4.3.4 for a detailed explanation of this recommendation).
6. Require the Board to be regularly informed of
- particularly significant complaints and non-compliance findings;
 - disagreements between the EIBG-CM and the Services on non-compliance findings and recommendations, and on the resolution of those disagreements by the MC; and
 - systemic recurrent issues emerging as part of the EIBG-CM investigations.
7. To increase the Advisory function's value to the EIBG's governing bodies, revise the EIBG-CM Policy to:
- Require the EIBG-CM's Advisory function to report periodically to the Board, produce lessons learned reports and provide advice to the Board on request.
 - Issue periodic public advisory notes (perhaps starting with one per year) on a particular systemic issue that has been identified by the EIBG-CM, and
 - Make it explicit that the MC and the Board may ask the Advisory function for advice on specific issues related to the EIBG-CM's mandate and experience with project-related complaints. (See section 4.5 for details.)

4. Core functions and procedures

4.1. Admissibility

4.1.1. Eligible complainants and allegations of complaints

48. At present, access to the EIBG-CM is easy. The EIBG-CM Policy (para. 4.3.1) allows any natural or legal person who alleges a case of maladministration by the EIBG group in its decisions, actions and/or omissions to lodge a complaint. As laid out above, under the current EIBG-CM Policy, the alleged maladministration does not need to relate to a project and the complainant does not need to specify the negative impact. Thus, any person around the globe can submit a complaint. There is no requirement that the complainant have any connection to the EIBG-financed investment.

49. This review recommends that the scope and thus also the access to the EIBG-CM be revised as follows:

- i. To be admissible, complaints must relate to a project/investment financed by the EIBG. Alleged negative impacts must be plausibly linked to the project/investment.
- ii. The complainant must be affected by the alleged negative impact, either already at the time of filing or potentially in the future.

- iii. Allow allegations of likely future negative impacts, as many negative impacts only materialise once a project has become operational over longer periods of time²⁰.
- iv. Complainants may choose an individual or an organisation to represent their interests; any such representative must provide written authorising documentation from the complainants;
- v. Because the EIBG is subject to the Aarhus Convention, CSOs, local or international, who are actively pursuing environmental concerns should also be allowed to submit complaints, provided their complaint refers to an EIBG financed investment and provided that the CSO alleges that this investment either causes or is likely to cause environmental negative impacts. The CSO would not need to demonstrate the direct impact on the members of the CSO but would need to demonstrate the global, regional or local negative environmental impacts resulting from the project. Affected people in such case are the local, regional or global community and not necessarily only the population being resident in the project area or the country where the project is located;
- vi. Requests related to project related environmental information, also addressed under the Aarhus convention, can continue to be submitted to the EIBG Services which can directly respond to this issue.

Recommendations: Identity of complainants and content of complaints

8. For a complaint to be admissible, the complainant needs to allege a present or likely future negative impact associated with an EIB-supported project. The complaint may or may not allege non-compliance with EIB policies and standards.
9. The mandate of the EIBG-CM should be for project-related complaints and related policies. Project-related policies include the (i) policies and standards; (ii) procedures related to the policy and/or standards, and (iii) related guidance notes and instructions.
10. Complainants can choose to be represented by local, regional or international representatives (individuals and/or organisations) but need to provide an authorisation for representation.
11. Non-governmental organisations pursuing matters of environmental concerns should be allowed to submit complaints on EIBG projects/investments where environmental impacts are local, regional or global reaching beyond the narrow confines of the location, region or country where the project is located.

4.1.2. Timeframe for filing complaints

50. The timeframe during which complainants can presently file a complaint is significantly longer than that allowed by other IAMs. Present policy provisions create ambiguity for complainants. The EIBG-CM Policy provides that “Complaints must be submitted within one year from the date on which the facts upon which the allegation is based could reasonably be known by the complainant” (para. 4.3.10). Complaints may be filed long after a financial relationship has been closed if the complainant only becomes aware of impacts at a late stage. For such cases, a provision in the EIBG-CM Policy (para. 4.3.13) states that even if a complaint is admissible, “there may be limitations in the handling of complaints submitted when the contractual relationship with the Borrower/Promoter no longer exists as the EIBG does not have any

²⁰ All other IAMs allow complainants to allege likely future harm as many impacts only materialise many years after a project has become operational, such as impacts on health, environmental impacts. An insistence that harm must have materialised before allowing the complainant to allege the negative impact, would go counter the “do no harm principle” of development finance institutions.

possibility to restore compliance.” By allowing complaints to be filed within one year from the date on which the facts upon which the allegations are based, the EIBG-CM Policy creates uncertainty about the precise timeline, especially in relation to who decides when certain facts should have been known by the complainant and what criteria are employed²¹. It furthermore requires significant efforts and resources from the EIBG-CM to gain the knowledge to make an appropriate judgement. While in principle, flexibility in admissibility is welcome, as complainants often learn late about the impacts an IFI financed has on their wellbeing, the fact that clause 4.3.13 states that after contract closure the EIBG will not have the possibility to restore compliance, significantly reduces the benefits of such a clause. An investigation with noncompliance findings which will not lead to corrective actions is of limited value for the complainants (although there could be institutional learning for EIBG).

51. This review therefore proposes to replace para. 4.3.10 with a fixed deadline consistent with policy provisions at most other IAMs. At the EBRD/IPAM, ADB/CRP and SPF, AFDB/IRM complaints can be filed up to 24 months after closing of a financial relationship, while the World Bank allows for 18 months after the closing of a project²². IFC/CAO and DEG-FMO-PROPARCO/IRM only allow for filing up to closure of the financial relationship, but a financial relationship is active until the full loan/equity has been repaid, which is typically significantly longer than a World Bank project closure. The CAO provides in exceptional circumstances that a complaint can be submitted up to 15 months after closure of the financial relationship with IFC²³. These timeframes acknowledge the fact that negative impacts often only become evident once a project is operational for some time²⁴. Furthermore, most MDBs contractually require borrowers to sustain Environmental and Social Safeguards beyond the closing date and in many cases do supervise adherence to environmental and social standards even after the closing of the financial relationship. Thus a 24-month deadline after project closure allows for some additional time for complainants to file. This review considers that a deadline of 24 months following project closure would provide a reasonable amount of additional time for complainants to file and recommends that the EIBG-CM adopt such a provision. There are different options on when for the purpose of defining admissibility to the EIBG-CM a project should be considered closed. Many IAMs take the closure of the financial relationship as relevant closing point. Other IAMs, especially if the repayment periods are very long and thus the financial relationships only close after a long period, consider the ending of the project supervision process as closure. Project closure also occurs if a financial relationship closes due to, for example, early exit due to early repayment of loans. For investments in financial intermediation loans the project closes when the lending relationship has been closed (plus 24 months). For equity investments, the project remains active (non-closure status) as long as EIBG maintains the equity investment (plus 24 months). A revised EIBG-

²¹ See CEE Bankwatch Network, Holding the EIBG and EBRD accountable, Are their grievance mechanisms effective, November 2024.

²² Closing of a project at the World Bank occurs significantly earlier than closing of a financial relationship as maturities for repayment in World Bank sovereign loans are very long. Projects are closed once the funded project components have been adequately implemented.

²³ CAO policy para. 49 states: “*in exceptional circumstances, CAO may deem eligible a complaint submitted up to 15 months after an IFC/MIGA exit, where (a) there are compelling reasons why the complaint could not be made before the IFC/MIGA exit; (b) all of CAO’s other eligibility criteria are met, and (c) after consultation with Management, CAO considers that accepting the complaint would be consistent with CAO’s mandate.*”

²⁴ Some IAMs set a fixed timeline after project closure, other IAMs after closing of the financial relationship. There are significant differences in the length of financial relationships. Financial relationships for private sector financial operations are significantly shorter than for sovereign lending where repayment obligations often take place over very long period of time. With such long repayment periods, project closure is the more relevant reference point.

CM policy will need to lay out the ‘closure’ definitions for different EIBG lending/equity operations to be applied for defining the timeframe on how long complaints can be admitted.

Recommendations: Timeframe for filing complaints

12. Replace the present timeline where a complaint can be filed up to one year after the complainant gaining knowledge or after the complainant could have reasonably known with a fixed time of 24 months after project closure.
13. A revised EIBG-CM policy needs to define the project point which should be considered the closure point for an admissibility process for different equity/lending operations.

4.1.3. Prevention procedure: complaints filed prior to financing approval

52. The EIBG-CM Policy allows complaints to be filed for projects or investments that have not yet been finally approved: Para. 4.3.12 states that the EIBG must be ‘at least actively considering financing’ for such projects. Allowing complaints at an early stage, even before financial approval, is good practice²⁵. Negative impacts often occur as a result of inadequacies in project preparation, stemming from insufficient environmental and social impact assessments and resettlement plans, inadequate consultation processes, wrong application of the indigenous people policy with incorrect categorisations, or failures to obtain free, prior, informed consent. When cases of noncompliance are detected early - before implementation activities commence - they often can be corrected, while remedial actions are much more difficult to achieve once a project is under implementation, i.e. contracts have been signed and works have started.

53. However, while the EIBG-CM can admit complaints before financing approval, it usually does not process the complaint but rather refers it to the Services for consideration. The handling of such complaints is considered a ‘prevention procedure’, as described in para. 3.1.1 of EIBG-CM Procedures. It is within the domain of the Services on how to respond to the complaint. Complaints filed in the past under the preventive procedure have not regularly led to corrective actions. The EIBG-CM only has a very limited mandate under the ‘prevention procedure’. The EIBG-CM can conduct an initial assessment only if the Services (the appraisal team) refuse to engage with the complainants (EIBG-CM Procedures para. 3.1.2 (b)). This ‘hands-off approach’ is in contrast to policy provisions of the ADB/CRP and the World Bank/IPN, both of which allow admission of complaints prior to financing approval and then process them through the regular compliance review procedure.

54. This review recommends that the EIBG-CM continues to refer complaints filed before financing is approved to the Services but then provides them with a defined time period to address the concerns. If during the agreed timeframe, the concerns laid out in the complaint have not been addressed to the complainant’s satisfaction, the complaint should proceed through the regular EIBG-CM complaint-handling procedures. In addition, it should be established that for all complaints filed under the preventive procedure, the Services need to inform the MC and the Board about the complaint (including how it has been addressed) at the time the relevant project documents are submitted for financing approval. The EIBG-CM should also have the opportunity to present their position on the adequacy of measures taken in response to the complaint. These position statements should be part of the document package presented to the Management Committee and the Board for financing approval of the project²⁶.

Recommendations: Prevention procedure

14. The admissibility of complaints regarding projects not yet approved for financing should be maintained and such complaints should be followed up by EIBG Services. If the

²⁵ See Accountability Counsel et. al., *Good Policy Paper*, 2024, page 48.

²⁶ The CAO does not allow admission of a complaint prior to approval of financing but routinely refers such complaints to the Board and Management and records them in its registry (see CAO policy paras. 47-48).

Services have not resolved issues raised under the complaint within the agreed time period to the satisfaction of the complainant, then the EIBG-CM should be authorised to proceed with the complaint under its regular processes. In exceptional cases, an extension to six months is possible.

15. In all cases, EIBG management should inform the Management Committee and the Board about the complaint at the time when project documents are presented for financing approval. The EIBG-CM should be asked to provide its assessment on actions taken by the Services in response to the complaint.

4.1.4. Clarification of the judicial clause

55. The EIBG-CM Policy provides for a ‘judicial clause’ (para. 4.3.8), which excludes complaints that have already been brought against a member of the EIBG Group before other administrative or judicial review mechanisms, including complaints in progress or already settled. As the clause refers to complaints brought against a member of the EIBG group it refers to judicial processes where the EIBG can be sued. It is thus a clause which only refers to proceedings where the EIBG is the accused party. However, the clause with its present wording appears to be a cause of confusion between the EIBG Services and the EIBG-CM. Services tend to interpret this wording as a general exclusion clause applicable to all judicial proceedings addressing issues raised in the complaint. Such a general judicial exclusion clause is not advisable. Affected people should have the right to file cases in their own countries with courts or grievance mechanisms in accordance with national law in parallel with their right to file a complaint with the EIBG-CM, as the EIBG-CM applies EIBG policies. The judicial clause requires clarification to avoid ongoing divergent interpretations.

Recommendations: Judicial clause

16. The judicial clause needs to be clarified to specify that the exclusion only relates to complaints filed against the EIBG with EU institutions. It is not a general judicial clause excluding any complaints for which judicial proceedings are pending.

4.1.5. Self-initiated complaints

56. The EIBG policy provides for the possibility of ‘self-initiated complaints’: EIBG-CM Policy para. 5.1.6 states that complaints can be initiated by ‘(i) a specific request of the President, the EIBG Management Committee or the EIF Chief Executive; (ii) by the Inspector General, either on his own initiative, or on the basis of a reasoned proposal of EIBG-CM’. To date, only one self-initiated complaint has been initiated. However, the provision for self-initiated complaints is becoming increasingly important, as affected people frequently are reluctant to file complaints themselves due to increasing retaliation risks²⁷. The importance of this provision is underscored by recent landmark cases at the CAO that began as self-initiated complaints²⁸. The CAO policy, the AFDB/IRM, the Green Climate Fund (IRM) and the Independent Accountability Mechanism of US DFC all provide the head of the mechanism with the right to self-initiate complaints if specified criteria are met. In several ongoing IAM policy reviews, recommendations are being made to

²⁷ The World Bank Inspection Panel notes that in 50 percent of their complaints, complainants are subject to retaliation and reprisals, see Ramanie Kunanayagam et al. “Glass Half-Full or Glass Half-Empty? 2023” World Bank Inspection Panel, “Right to be Heard: Intimidation and Reprisals in the World Bank Inspection Panel Complaints”, Emerging Lessons Series 7, World Bank, Washington, DC, December 2022.

²⁸ See, for example, the CAO Dinant case, <https://www.cao-ombudsman.org/cases/honduras-dinant-01cao-vice-president-request>; the CAO Compliance investigation in the Bridge Academy, <https://www.cao-ombudsman.org/cases/keny-bridget-internationa-academies-04kenya>; India Tata Tea 01 <https://www.cao-ombudsman.org/cases/India-tata-tea-01ca0-vice-president-request>

include in the policy a provision for self-initiated complaints, recognising the increasing importance of such an instrument²⁹. This review echoes the importance of such self-initiated complaints and recommends that this option should be maintained and more actively used in situations where the EIBG-CM gains knowledge about significant and systemic issues of noncompliance and significant project-related harm. In addition, the EIBG Board and the Management Committee (MC), as the representative of shareholders with oversight responsibility, should also be authorised to self-initiate complaints³⁰. It is unusual that the EIBG-CM Policy does not provide this right to its Board.

Recommendations: Self-initiated complaints

17. Self-initiated complaints as outlined in present policy should be maintained and used.
18. Introduce into a revised EIBG-CM Policy the provision that the Board has the right to initiate complaints.

4.1.6. Complainants' preferences for Dispute Resolution or Compliance Function

57. Most IAMs provide complainants with the possibility to express their preference for a compliance investigation or a dispute resolution process if their complaint is admitted. While not all IAMs are obligated to honour this choice, they mostly respect the stated preference when processing the complaint³¹. This principle of 'complainant choice' is reflected in the EIBG-CM Policy: "the complainant may ask for an investigation/compliance review or mediation" (Para. 4.1.5). However, neither the Policy nor the Procedures specify in what way or with what weight the complainant's preferences should be considered. CSOs are very critical about the lack of clarity in the EIBG-CM Policy regarding the way in which the complainant's stated preference to pursue either a dispute resolution or a compliance process is to be honoured³². The Review recommends that complainants' informed choice should determine the way the complaint proceeds: to initial dispute resolution assessment or to the initial compliance assessment. The decision whether a complaint should proceed to a prior resolution process and thus be referred to Services is a decision taken solely by the EIBG-CM as the EIBG-CM needs to make a judgement whether a particular case is suitable for such a referral. But the EIBG-CM cannot refer a case to the Services for early resolution unless the complainants agree to such a referral.

Recommendations: Complainants' preferences

19. Make it explicit in the Policy that complainants have the option to request dispute resolution or a compliance process, and that their preference (following initial discussion

²⁹ See World Bank, External Review of the Board Approved Reforms to the Inspection Panel Toolkit and Creation of the World Bank Accountability Mechanism, July 2024; Elbakri, Zeinab, Asian Infrastructure Investment Bank Project-Affected People's Mechanism, External Review, May 2024; Elbakri, Zeinab, Assessment of the Independent Accountability Mechanism of the European Bank for Reconstruction and Development, May 2024.

³⁰ The AfDB, ADB, World Bank and the IFC IAMs provide the right to self-initiate a complaint to their Board members.

³¹ See for example AIIB/PPM policy para. 6.1 "*The Requestors shall be encouraged but not required to indicate under which PPM function they propose their submission to be reviewed*".

³² See CEE Bankwatch Network, Holding the EIBG and EBRD accountable, Are their grievance mechanisms effective? Page 19 "*neither the Policy nor the Procedures sufficiently clarify the role of the complainant in deciding the function under which the complaint will be processed. (...) According to the Procedures, the Head of the EIBG-CM, in agreement with the EIBG Inspector General, decides whether the complaint merits and investigation or compliance review, a collaborative process, or formal mediation based on the initial assessment report and any response of EIBG services. This process clearly indicates that the opinion of the complainant has minimal influence over the final decision.*"

with the EIBG-CM to ensure informed choice) will be the primary factor determining whether the complaint proceeds to initial dispute resolution assessment or initial compliance assessment. Whether a dispute resolution can be launched will be determined during the initial dispute resolution assessment process by the DR team.

20. For a referral to the Services for Prior Resolution, it is the EIBG-CM which takes the decision but the EIBG-CM can only refer a complaint to the Services with consent of the complainants.

4.2. Initial assessment

4.2.1. Initial assessment phase

58. An initial assessment is conducted once a complaint has been declared admissible. The purpose and criteria for such an initial assessment are multiple and unclear. The EIBG-CM Policy only states that the EIBG-CM should conduct an initial assessment. Some details are provided in the Procedures, where the initial assessment is described as fact-finding with the objectives to '(i) clarify the concerns raised by the complainant (...); (ii) understand the validity of the concerns raised; (iii) assess whether and how the project stakeholders could seek resolution (...); and (iv) determine if further work by the EIBG-CM is necessary and/or possible (...) to address the allegations to resolve the issue raised by complainants' (para. 2.2.1). For complaints "that raise substantial concerns regarding environmental or social impacts and/or relate to serious governance issues in the EIBG Group's operation" (para. 2.2.4), the initial assessment is also supposed to include a preliminary assessment of potential non-compliance.

59. A review of selected initial assessment reports suggests that the perceived purpose of the initial assessment varies across EIBG-CM staff. Most initial assessments clarify the complaint and lay out the relevant policy norms related to issues raised in the report, but they do not, establish whether there is a potential policy violation. Each initial assessment report concludes with a decision on whether the complaint process should be continued, and if so, whether the complaint should proceed with a dispute resolution or with a compliance review process. Initial assessments generally do not provide a justification for that decision. However, the Review Team was informed that for complaints that seem suitable for dispute resolution because of the nature of the allegations, efforts are made to establish whether the complainant and the borrower would be willing to enter a dispute resolution process. One objective of the initial assessment therefore seems to be to establish whether there is a possibility to proceed with a dispute resolution. In principle, both a staff from the compliance team and a staff from the dispute resolution team should collaborate in the initial assessment process; in practice, the dispute resolution staff are only able to participate in some assessments (varying from 33 % to 76 % over the period 2022-Q3 2024). The initial assessment phase is designed as a relatively lengthy process of up to 60 working days (EIBG-CM Procedures para. 2.2.6); data are not available to determine whether the actual time taken aligns with this expectation.

60. The Review Team proposes to replace this multipurpose initial assessment with a simplified process which has as its sole objective to determine whether a complaint proceeds with the dispute resolution or the compliance function or whether it could be attempted to be resolved through an early resolution process. The initial assessment process would clarify the complaint; brief the complainant (jointly by members of the dispute resolution and a compliance review teams) about the alternative processes available and their implications; and would then direct the complaint either to (a) early resolution to the Services, (b) dispute resolution, or (c) the

compliance process. The initial assessment phase would have the role of a “traffic junction”, deciding which process the complaint will follow. No substantive factual reviews would be conducted and no efforts would be made to engage with the promoter to explore a dispute resolution process (as is presently the case). The initial assessment phase would only work with the complainant to establish whether they are interested in exploring dispute resolution, compliance, or a transfer to Services for early resolution. As noted in the section on complainant choice, the complainant should play the key role in choosing either the compliance and the dispute resolution process, after a formal briefing meeting to make them sufficiently aware of the choices and the implications. For referral to early resolution the EIBG-CM takes the decision but can only make a referral if the complainant agrees to such a transfer. This proposed initial assessment phase does not require issuing a report but rather a very short decision recording how the admitted complaint will be processed. This decision would need to be made public via the website. The EIBG-CM is solely responsible for that decision. No consultation with the Services is required.

61. For complainants proceeding with the compliance process, a separate initial compliance assessment would determine whether there is sufficient preliminary evidence of non-compliance and related negative impacts to justify a full investigation process. This initial compliance assessment as the entry point into the compliance process is described in section 4.3.2 below.

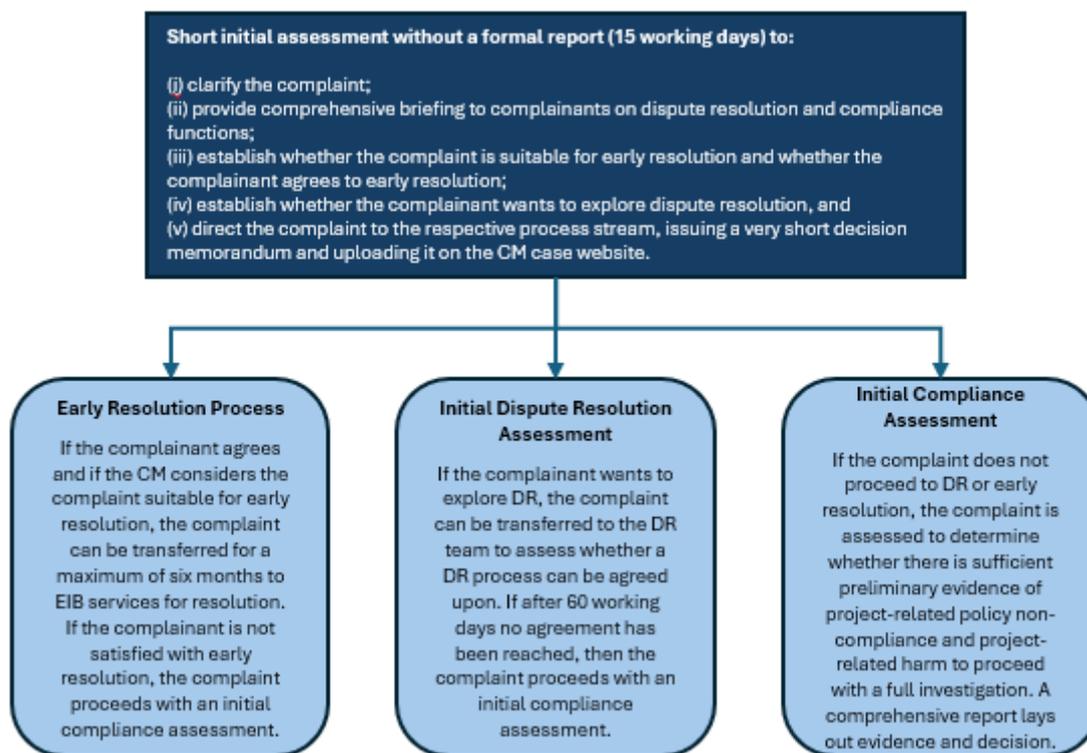
62. For complainants proceeding with a dispute resolution process, the DR team would establish within 60 working days whether an agreement can be reached with the promoter to proceed with a dispute resolution process.

63. This Review Team also proposes to establish an early resolution process for complaints which can possibly be resolved by the Services without proceeding through a full DR or compliance review process (see section 4.2.2 for more details).

64. In summary, the slimmed-down initial assessment phase would entail:

- (i) Clarifying the nature of the complaint after consultation with the complainant. The EIBG-CM should not take more than 15-working days to issue a very short background memorandum.
- (ii) Providing an in depth briefing to the complainant about the dispute resolution and compliance functions, and about the option for the EIBG-CM to refer the complaint to the Services. The briefing would be done jointly by a staff of the DR unit staff and the compliance unit.
- (iii) Establishing whether the complaint could be suitable for an early resolution process and whether the complainant agrees to such a process. If yes, the complaint is transferred to the Services for early resolution (described in section 4.2.2).
- (iv) If the complainant is interested in considering a DR process: transferring the complaint to the Dispute Resolution team which then has up to 60 working days (12 calendar weeks) to establish whether the promoter and the complainant can agree to proceed with a dispute resolution process.
- (v) If the complainant wishes to proceed with a compliance process, the complaint is transferred to the compliance process and an initial compliance assessment is conducted to establish whether there is sufficient preliminary evidence to proceed with a full investigation or whether the complaint should be closed.

- (vi) Upon completion of the initial assessment: posting on the EIBG-CM website a very short decision recording how the complaint will be processed. No consultation with services is required on this decision note.

Figure 4. Proposed revised Initial Assessment**Recommendations: Initial assessment phase**

21. Replace the current multipurpose, comprehensive initial assessment with a simplified process which would:
 - define the complaint;
 - provide the complainants a comprehensive briefing on choices for complaint processing;
 - explore whether the complaint is suitable for an early resolution process and whether the complainants would agree to such an early resolution process; and
 - explore whether the complainants prefer a dispute resolution process or a compliance process.
22. Complaints suitable for an early resolution process and agreed by complainants would be transferred to the Services for a maximum of six months. It would be the sole decision of the EIBG-CM to decide whether a complaint is suitable for early resolution but a transfer requires the consent of the complainant.
23. Replace the initial assessment report with a very short decision documenting how the admitted complaint will be processed; upload the note on the EIBG-CM case website. This decision note should not be subject to consultation with Services.
24. If the complainant wants to explore a dispute resolution process, the complaint would be transferred for a maximum of 60 working days to the dispute resolution team, which would explore with the promoter and the complainant whether an agreement to proceed with a dispute resolution can be reached. If agreement to proceed with a DR process cannot be reached, the complaint would be transferred to the compliance function.
25. Complaints which enter the compliance track would start with initial compliance assessment, to establish whether preliminary evidence of non-compliance and project-related negative impacts warrants a full investigation, as proposed in section 4.3.2.

4.2.2. Early resolution process

65. Some EIBG-CM complaints on environmental and social risks and impacts could be resolved early on without going through a full complaints process. The EIBG-CM Policy and Procedures already provide for a simplified procedure when an easy and prompt resolution can be offered through a reply letter instead of a Conclusions Report. This simplified process, however, is presently not available for project-related complaints which allege maladministration relating to environmental and social policies and to governance of EIB-financed projects handled by the EIBG-CM.

66. This review proposes to allow the possibility of an early resolution process by the EIBG Services for suitable complaints. Complaints which do not allege very significant instances of non-compliance, where there are not very serious alleged impacts and where corrective actions are available to address the alleged issues which can be implemented within a limited timeframe, could be suitable for such an early resolution process. Early resolutions could help reduce the EIBG-CM's caseload, reduce costs and achieve faster remedial actions, when they can be quickly agreed upon and implemented. Finding early solutions to complaint issues, if this is possible, is in the interest of the complainant. Such early resolution processes are already provided for in the CAO policy, the AfDB/IRM policy and the EBRD/IPAM policy, as detailed in the following table.

Table 5. Early resolution processes in other IAMs

IAM Policy	Provisions on early resolution
IFC/CAO Policy para. 98	In specific cases (...) the CAO DG may decide to defer the decision to investigate to allow IFC/MIGA, the Client and the Complainant to resolve issues directly: Criteria for decision to defer: (a) The severity of alleged Harm and potential compliance issues raised by the Complainant, including whether the issues of alleged Harm are clearly defined, limited in scope, and appear to be amenable to early resolution, (b) whether the Management response includes specific commitments that are commensurate with the issues raised in the complaint or during the assessment, and consistent with IFC/MIGA requirements; (c) the views of the Complainants as to the impact (positive and negative) of a decision to defer; and (d) other information deemed relevant by CAO.
EBRD/IPAM Policy para. 2,2 f (ii)	IPAM may (...) suspend the registration and forward the Request to Bank management. Bank management will have a maximum of 45 Business days, at the discretion of the IPAM Head, to make good faith efforts to address the issues raised. During the suspension period, IPAM will monitor the status and progress (...) IPAM may lift the suspension and register the Request for further Case processing if Bank management or Client efforts, in the opinion of IPAM, have not resolved the issues raised in the Request.
AfDB/IRM para. 43	Identical language as in EBRD/IPAM policy for a temporary suspension in case complainants did not make prior good faith efforts with AfDB management

Source: Policies of respective IAMs

67. After the EIBG-CM declares the complaint admissible, the complaint could be transferred to the Services provided that the Services are willing to pursue the complaint through a prior resolution process. No complaint can be transferred to the Services for early resolution if the complainant does not agree to it. This provision is essential. Many complainants had already lengthy previous interactions with the promoter and turn to the EIBG-CM as they did not find a solution. Complainants also often fear 'retaliations' for having filed a complaint with an IAM and thus prefer to proceed with a formal compliance process rather than being turned back to the promoter and the Services.

68. The EIBG-CM will determine the timeframe for the transfer. During the transfer period, the Services should attempt to address the issues raised in the complaint. If during the defined time

period, the issues raised in the complaint have been resolved to the satisfaction of the complainant, then the complaint will be closed and a closing statement will be recorded on the EIBG-CM website. If the issues have not been solved to the satisfaction of the complainant, then the complaint will return to the EIBG-CM which will then proceed with the initial compliance assessment report to establish whether there is sufficient preliminary evidence for non-compliance and related negative impacts to proceed with a full compliance investigation. The transfer back to the EIBG-CM into the compliance process would also be recorded on the EIBG-CM case website. If complainants are of the view that their concerns have only been partially addressed, they can choose to proceed with a compliance review process for unaddressed issues or decide to close their case if they prefer not to proceed further. Complainants can also decide to leave the early resolution process if they are of the view that no progress is achieved or that the parties are not acting in good faith. The complaint would then be transferred to the initial compliance assessment.

69. Only in exceptional cases should a complaint transferred to early resolution proceed with a DR process as the early resolution process already provided the opportunity for a collaborative process. However, in exceptional cases, where complainants express a strong preference to proceed with a DR process after an unsuccessful early resolution process, the Head of the EIBG-CM may decide to transfer the complaint to the DR unit to provide the opportunity to explore the possibility to reach agreement on a DR process. The 60-working-day time limit established for the initial dispute resolution assessment (see figure 2) applies

70. All complaints, including those which are referred to early resolution, first need to be admitted by the EIBG-CM. The early resolution process proposed here should not be confused with a requirement that all complaints first be addressed to the Services before they can be admitted by the EIBG-CM. Some IAMs require such ‘prior good faith effort’ with operational departments before a complaint can be admitted by the IAM, but this is not considered good practice, and in recent years most IAMs have eliminated this requirement. The EIBG-CM should be directly accessible to complainants and thus this review does not propose the requirement of a ‘prior good faith effort’ with management before a complaint can be admitted by the EIBG-CM. Similarly, neither admissibility nor the early resolution process requires that the complaint first be submitted to local grievance mechanisms.

71. Finally, it is important to underline that only suitable complaints should be transferred to the Services for early resolution. The criteria for transfer should include the likelihood that a swift resolution seems feasible, and that the complaint does not address significant systemic issues and does not allege very severe negative impacts. The early resolution process should under no circumstances become a standard feature for all complaints. Criteria should be developed for determining whether an early solution process appears suitable but criteria need to remain flexible and the EIBG-CM head needs to maintain degrees of freedom in applying these criteria. The CAO criteria (see Table 5) might provide some guidance. In any case, the agreement of the complainant to such early resolution is essential, and the decision whether to refer a complaint for early resolution needs to be the exclusive decision of the EIBG-CM Head. Project Services cannot demand early resolution.

Recommendations: Early resolution process

26. Establish an early resolution option for admitted complaints the EIBG-CM considers can be resolved quickly by the Services, if the complainant agrees with such a process and the Services are willing to become engaged. The decision whether a complaint is suitable for early resolution rests solely with the EIBG-CM.

27. The early resolution process should be limited to a six-month time period with no possibility for extension.
28. If the issues raised in the complaint are addressed to the satisfaction of complainants within the time period, the EIBG-CM will close the case. If the issues are not resolved, the complaint returns to the EIBG-CM for a preliminary compliance assessment; or for initial dispute resolution assessment in exceptional cases.

4.2.3. Case management procedures

72. The EIBG-CM Policy (para. 4.2) provides for different procedures for different categories of complaints. In section 3 of this report, the review recommends redefining the mandate and scope of the EIBG-CM and to narrow the scope of the EIBG-CM to project-related complaints, maladministration of project related environmental and social standards and project related information disclosure. All other types of complaints should be transferred to other EIBG units. This report also recommends an early resolution process (section 4.2.2) for complaints which could be resolved within a six-month period by the EIBGG Services. This review does not consider it necessary to maintain several categories of complaint procedures. It recommends maintaining only the extended procedure (with the proposed adjustments) and a modified prevention procedure as laid out in section 4.1.3).

Recommendations: Case management procedures

29. Maintain only the extended procedure, based on the significant adjustments recommended in sections 4.3.2 and 4.3.3 of this report.
30. Maintain the preventive procedure with the adjustments recommended in section 4.1.3 of this report.
31. Eliminate all other procedures.

4.3. Compliance

4.3.1. Scope of the compliance investigation

73. The compliance review process is the main instrument of the EIBG-CM (see para. 5.3.3 EIBG-CM Policy). In 2022, 76 % of admitted complaints proceeded through a compliance investigation (including simplified procedure). This share is significantly higher than in other IAMs where on average about half of the complaints proceed through the compliance and half through the dispute resolution function. According to the EIBG-CM Procedures (para. 2.4.5), “the objective of the compliance investigation is to allow the EIBG-CM to form an independent and reasoned opinion regarding the allegations of maladministration by the EIB Group raised by the complaint”. The compliance investigation is thus focused on maladministration.

74. This review proposes to change the scope/mandate of the EIBG-CM from maladministration to a tighter focus on project-related policy non-compliance, related negative impacts (see section 3.1). If these adjustments in scope/mandate were to be made, the focus of the compliance investigation would also need to be adjusted. A compliance investigation would establish whether there have been cases of non-compliance with relevant project-related EIBG policies and procedures. Most IAMs in addition require that compliance reviews investigate whether the IFI has done its ‘due diligence’ in assuring that the promoter implements the relevant project related policies and followed project related procedures and guidance. Some newer IAMs, such as the Green Climate Fund/IRM do not focus on failures of whether staff/management of the institution assured that policies are implemented but assess only whether there has been

relevant project-related non-compliance³³. A revised EIBG-CM Policy would need to specify whether the EIBG-CM investigation only focuses on the project's compliance with E&S policies and related procedures, or whether the investigation, in addition, also needs to establish whether any observed instances of non-compliance can be attributed to the EIBG, as the institution did not adequately assure that the policies are implemented by the promoter.

75. A compliance investigation also has to verify alleged negative impacts. Such negative impacts can have already manifested or may happen in the future. As many negative impacts only materialise years after a project is operational (especially environmental harm and health impacts), IAM policies always provide that potential (or likely) impacts can be alleged and established in a compliance investigation. There is wide consensus that negative impacts cannot be restricted to materialised impacts only. IFIs need to have as their objective to avoid or minimise negative impacts and thus cannot insist that the harm must already have happened before a complaint can be filed.

76. Furthermore, a compliance investigation needs to establish, first, the linkage between the negative impact and the project, and second, the linkage between the negative impact and the policy noncompliance. The IFC/CAO policy³⁴ and the EBRD/IPAM³⁵ policy require that the compliance investigation establishes that the negative impact is 'related' or 'associated' with the policy noncompliance. The requirement of the ADB/CRP is more stringent. The compliance investigation needs to establish a causal relationship between the negative impact and the policy noncompliance³⁶. Determining causality is difficult, as evidence for causality in many instances is very challenging to establish. Especially for environmental harm and health impacts there are often multiple causes for impacts. Establishing causality often requires specialised studies which significantly lengthen a compliance investigation and increases costs. This review thus is of the view that the linkage provisions reflected in the EBRD/IPAM or the IFC/CAO policies, which call for a linkage but not causality, are preferable.

77. A revised CM Policy should lay out that the objective of a compliance investigation with findings of noncompliance and related negative impacts is to (i) correct the noncompliance, and (ii) facilitate access to remedy to address negative impacts. An additional objective is to learn from compliance review cases. This is highlighted in the Advisory section of this report (see section 4.5).

78. Confirming that the EIBG-CM is mandated to facilitate remedial actions by the EIBG to address negative impacts resulting from noncompliance is a very essential adjustment. The present policy does not provide for such a focus. The present mandate is to assess maladministration and most follow-up measures focus on the correction of maladministration, albeit in many cases recommendations also provide for measures to remedy at least some of the negative impacts. However, given the limited mandate in the current EIBG-CM policy to facilitate access to remedy, the role of the EIBG-CM when trying to recommend remedial measures is often

³³ This focus of the IRM also reflects the unusual operating modality of the GCF. The GCF operates primarily by funding Accredited Entities (AEs). Those AEs are the ones responsible for most of the work of project due diligence and supervision.

³⁴ See para. 112 CAO policy: "A compliance investigation determines whether IFC/MIGA has complied with its E&S Policies and whether there is harm related to any IFC/MIGA noncompliance."

³⁵ See para.2.7.1 (i) EBRD/IPAM policy: "(...) to address the harm associated with the findings of noncompliance (...)"

³⁶ See para. 186 ADB Accountability Policy: "The CRP compliance review report will (...) ascertain whether the alleged direct and material harm exists. If noncompliance is found and the alleged direct and material harm is confirmed, the report will focus on establishing the noncompliance as a cause for the alleged harm."

challenged. Among IAMs, much attention has been given in the last ten years to strengthen the focus of IAMs on the provision of remedy to address harm³⁷. A revised CM Policy should state that in case of noncompliance and related negative impacts the EIBG-CM facilitates access to remedy for project-affected people. As most remedial actions are typically taken by the promoter and not directly by the EIB, the term ‘facilitation of access to remedy’ is chosen. The wording of the CAO policy (para. 5) could be taken as guidance.

Recommendations: Scope of the compliance function

32. Establish the objective and focus of the EIBG-CM compliance function to determine whether there is noncompliance with project-related policies with EIB environmental and social policies/standards.
33. Establish whether there are negative actual or potential impacts related to the project and related to noncompliance with E&S policy/standards.
34. Establish that if there are findings of non-compliance with policies/standards, non-compliance and related negative impacts need to be corrected.
35. Establish that the EIBG-CM compliance function is mandated to recommend action by the EIBG to facilitate access to remedy in case of negative impacts related to the project and to policy non-compliance.

4.3.2. The Initial Compliance Assessment

79. Access to the EIBG-CM compliance function is currently easier than in other IAMs. Reasons are twofold: (i) admissibility to the EIBG-CM is easier (see section 4.1.1) and (ii) a full compliance investigation is also conducted for complaints for which there is no preliminary evidence of noncompliance and related negative impacts³⁸. As a result, the EIBG-CM conducts a large number of compliance investigations. This review argues that a full compliance investigation should only be conducted for complaints where there is sufficient preliminary evidence for noncompliance and related negative impacts. Full compliance investigations are expensive, absorb institutional capacity, and require institutional leadership to facilitate remedial actions. As investigation findings are presented in the public domain, they can be reputationally damaging to the EIBG and the promoter. Moreover, complainants – not infrequently – become subject to retaliations.

80. The Review Team is of the view that the EIBG-CM should conduct fewer investigations, but conduct them with more resources and more in-depth analysis, and that significantly more attention needs to be provided to the findings of EIBG-CM investigations by Senior Management and the Board with more attention to assure implementation of follow-up measures and more attention to establishing ‘lessons learnt’ from compliance investigation findings. Such attention

³⁷ See for example: <https://www.cao-ombudsman.org/resources/insights-remedy-remedy-gap>; <https://www.cao-ombudsman.org/resources/responsible-exit-insights-cao-cases>; <https://www.cao-ombudsman.org/resources/responsible-exit-insights-cao-cases>; Office of the United Nations High Commissioner for Human Rights, *Remedy in Development Finance*, 2021; External Review of IFC/MIGA E&S Accountability, including CAO’s Role and Effectiveness Report and Recommendations, June 2020, pages 69-80.

³⁸ EIBG-CM Procedures provide for the possibility to close a case when there is no justification for a compliance investigation. But there are no criteria laid out according to which such a judgement for closure should be made. Initial assessment reports reviewed by the Review Team did not show that present initial assessment reports are being used to establish preliminary evidence for noncompliance and related negative impacts.

is easier provided with fewer, more high-profile cases, than with the multiple heterogenous set of cases presently investigated.

81. Almost all IAMs have a separate process which establishes whether there is sufficient preliminary evidence which warrants a full compliance investigation. These assessments act as a ‘filter’ to determine which complaints should proceed to a full compliance investigation. Table 6 lays out policy provisions for different IAMs. In all cases, IAMs issue a rather comprehensive report for this assessment. The report is more substantive than the present EIBG-CM Initial Assessment Report and can be resource intensive as in some cases a site visit is required. However, for complaints proceeding to a full compliance investigation, this preliminary assessment work is useful as it is a direct input into the full investigation.

82. The review proposes that an Initial Compliance Assessment be introduced which should be issued within 60 working days. A revised EIBG-CM Policy would need to lay out criteria to be applied in the Initial Compliance Assessment. These criteria should include: (i) is there preliminary evidence for the alleged negative impacts? (ii) is the alleged negative impact plausibly linked to the EIBG financed project? (iii) is there preliminary evidence for non-compliance with relevant EIBG project-related policies, procedures and standards? (iv) is there preliminary evidence that alleged negative impacts are related to possible non-compliance with relevant project-related policies and procedures? The EIBG-CM needs to be authorised to take the decision whether it considers the preliminary evidence sufficient to proceed to a full investigation. The EIBG-CM must be the sole owner of the Compliance Initial Assessment Report, conclusions must not be consulted upon with the Services. The Initial Compliance Assessment Report needs to be uploaded on the EIBG-CM website.

Table 6. Overview of other IAMs’ preliminary assessment processes to determine whether a full compliance investigation is warranted

IAM	Title of Preliminary Report	Criteria for proceeding with compliance investigation; Reporting procedure
World Bank Inspection Panel	Eligibility Report	Confirmation of registration criteria and plausibility that alleged harm is linked to possible noncompliance, plus Board approval to proceed with investigation <i>Reporting: an eligibility report is issued containing recommendations to the Board on whether to approve conducting an investigation</i>
IFC/CAO	Appraisal Report	Whether there are preliminary indications of harm or potential harm, whether there are preliminary indications that IFC/MIGA may not have complied with its E&S policies, whether the alleged harm is plausibly linked to the potential noncompliance. <i>Reporting: an appraisal report is issued with a decision on whether to proceed to an investigation</i>
ADB/CRP	Eligibility Report	The CRP must be satisfied that (i) there is evidence of noncompliance; (ii) there is evidence that the noncompliance has caused, or is likely to cause, direct and material harm to project-affected people, and (iii) the noncompliance is serious enough to warrant a compliance review. <i>Reporting: an eligibility report is submitted by the CRP to the ADB Board with a recommendation whether to proceed with an investigation</i>
EBRD/IPAM	Compliance Assessment	A case is eligible for a Compliance Review if IPAM finds that: Upon preliminary consideration, it appears that the project may have caused or may likely cause direct or indirect material harm to the requesters or project-affected people and there is indication that the Bank may not have complied with a provision of the Environmental and Social Policy or the project-specific provisions of the Access to Information Policy.

IAM	Title of Preliminary Report	Criteria for proceeding with compliance investigation; Reporting procedure
AfDB/IRM	Eligibility Assessment	The IRM determines whether there is <i>prima facie</i> evidence that the Complainants have been harmed or threatened with harm by a Bank Group-Financed Operation and there the harm or threat may have been caused directly or indirectly by the failure of the staff and management of the Bank Group to comply with any of the relevant policies and procedures of the Bank Group.
Green Climate Fund/IRM	Compliance Appraisal	The IRM shall carry out a compliance appraisal to consider whether there is <i>prima facie</i> evidence that the complainant has been affected or may be affected by adverse impacts through noncompliance of the GFC funded project or programme with GCF operational policies and procedures. <i>Reporting: preparation of a compliance appraisal report.</i>

Source: Respective IAMs Policies

Recommendations: Access to compliance investigations
<p>36. Establish an Initial Compliance Assessment which determines whether there is sufficient preliminary evidence for project related policy noncompliance and related negative impacts to proceed with a full compliance investigation.</p> <p>37. Establish criteria to be applied in Initial Compliance Assessment, such as determining (i) preliminary evidence for alleged negative impacts; (ii) plausibility that alleged negative impact is related to EIBG funded investment; (iii) preliminary evidence for noncompliance with relevant project-related policies and procedures; (iv) preliminary evidence that alleged negative impacts are linked with possible noncompliance with E&S standards.</p> <p>38. Issue an Initial Compliance Assessment Report within 60 working days.</p> <p>39. Upload the Initial Compliance Assessment on the EIBG-CM website.</p> <p>40. If conclusion is not to proceed with an investigation, the complaint shall be closed.</p>

4.3.3. Extensive Consultations on Draft Conclusions Reports with Services compromise CM independence

83. A serious issue of concern is the present practice for the EIBG-CM to engage in very extensive consultations with the Services on the wording and findings and recommendations of the draft Conclusions Reports. These consultations are very lengthy. For cases closed in 2020, average consultations lasted 69 working days, for cases closed in 2021 average consultations took 66 working days, for 2022 it was 80 working days, for 2023 the average consultation time increased to 123 working days and for 2024 it increased again to 153 working days. These lengthy consultations on findings and recommendations account for a very significant share of total time required to process a complaint³⁹. In addition, there are consultations on the Initial Assessment for which no separate time recording is available. The EIBG-CM Policy provides for a consultative process with stakeholders (see para. 6.3.1.). But the EIBG-CM Policy also states that the EIBG-CM is independent from operational activities and stresses the EIBG-CM's institutional independence. A practice which provides for an 85-working-day review period to the Services, with multiple interactions on the wording and findings of the draft Conclusions Report, does not

³⁹ The very long consultation process is one important reason why actual times to complete a Conclusions Report are significantly longer than provided for in the EIBG-CM Policy. Actual times are 330 working days compared to 240 working days provided for in the Policy. Significant time overruns have been subject of complaints submitted to the EO, especially in the past when the EIBG-CM used to have a more severe backlog of cases, see EO complaints 2288/2011, 1739/2016; 146/2017 and 814/2017.

provide confidence that the independence and investigative authority of the EIBG-CM is sufficiently recognised and respected within the EIBG. In interviews conducted by the Review Team with complainants and their representatives, this collaborative process was heavily criticised and was perceived as compromising the independent investigation findings of the EIBG-CM.

84. Most IAMs provide for a fact-checking review of draft reports⁴⁰. But all other IAMs set a very tight deadline of typically 10-15 working days for the departments to respond and comments are restricted to ‘fact checking’ only⁴¹. The EIBG-CM is an independent body within the EIBG which has the authority to investigate. This independent investigation authority should not be compromised by the EIBG-CM being drawn into lengthy consultative processes. The EIBG-CM needs to ‘give voice’ to the Services and listen to their concerns. But the listening to the Services after an investigation has been concluded should take place in one single round of consultations which after 15 working days needs to be concluded. After receipt of the comments by the Services, it is the sole authority of the EIBG-CM to decide which comments of the Services to consider and which comments to disregard. A Conclusions Report is not a collaborative product between the Services and the EIBG-CM. The EIBG-CM is the sole “owner” of this report.

85. The EIBG-CM issues in its Conclusions Report a set of recommendations for follow-up actions. According to the EIBG-CM Policy (para. 6.2.6), these recommendations should be “agreed with the Services”. This review welcomes that the EIBG-CM has the opportunity to provide recommendations for follow-up actions in its Conclusions Report. But these recommendations cannot become subject to an agreement between the Services and the EIBG-CM. A Conclusions Report is an investigation report issued by the EIBG-CM. Recommendations presented in the Conclusions Reports should therefore also remain recommendations of the EIBG-CM.

86. While the EIBG-CM interacts very extensively with the Services on its draft Conclusions Report, no such consultations on the draft report take place with the complainants. Complainants have no possibility to express their views on the draft report and only receive a copy of the report once it is issued. This asymmetric process is strongly criticised by CSOs representing complainants. The imbalance between the extensive role given to the Services and lack of consultation given to complainants provides the impression that the EIBG-CM gives preferences to the view of the Services at the disadvantage to the complainants. Draft reports should be provided concurrently to the complainants and to the Services for factual reviews. Each party should have 15 working days to respond. Most IAMs practice such a concurrent, strictly time-limited one-time consultation process. Most IAMs also concurrently submit the draft report to the Promoters, as draft reports do take views on actions taken by the Promoter on which they should be consulted on, before the report is uploaded on an IAM website.

Recommendations: Extensive consultations on Draft Conclusions Report

41. Discontinue present extensive consultation process on draft Conclusions Report with Services and replace by a one stage 15-day commenting period. The EIBG-CM then has the sole authority to decide what comments provided by the Services to consider.
42. Abolish the requirement currently contained in the EIBG-CM Policy, that the EIBG-CM should agree with Services on recommendations for follow-up actions listed in Conclusions Reports.

⁴⁰ The exception is the World Bank Inspection Panel which does not have a consultation process with Management on its draft investigation reports.

⁴¹ See for example EBRD/IPAM which provides Management 10 working days to comment on IPAM Investigation report – IPAM policy page. 24

43. Concurrently provide the draft Conclusions Report to the Services, the complainants and the Promoter and limit consultation process to 15 working days only.

4.3.4. *A Management Action Plan with MC decision in case of dissent*

87. This review recommends the introduction of a Management Action Plan (MAP) as a new process to establish appropriate follow-up measures to investigation findings. Services should provide within 40 working days after issuance of a Conclusions Report a MAP which lays out specific measures to address findings of noncompliance and related negative impacts. The Services are responsible for preparing this Management Action Plan as it is the Services which work with the Promoter, know the project and can – in consultation with the promoter – assess what are the appropriate measures. The Services should take note of the findings and the recommendations provided in the conclusions for follow-up measures, but Services are not required to adhere to the recommendations if they judge otherwise.

88. Recommendations by the EIBG-CM should remain on high level. The definition of specific measures is the task of operational departments. EIBG-CM recommendations should only provide broad directions. Good MAPs list specific measures, with implementation timelines and, preferably, and if possible, with budget requirements⁴². The Services need to consult with the Promoter and the complainant on measures proposed in the MAP. This consultation process is important as it is typically the Promoter that is responsible for implementing measures to bring the project into compliance and implement remedial actions to address negative impacts. Measures laid out in a MAP cannot be restricted only to measures which can be taken by EIBG staff/management. Measures listed also need to encompass the measures to be conducted by the promoter, and for that the Promoter's agreement is needed. It is important to consult with the complainants to hear their views whether proposed actions would remedy the negative impacts incurred or likely to be incurred.

89. MAPs are the key instrument in the institutional response to an IAM compliance investigation. They provide the position of management on investigation findings and commit the IFI to supporting remedial actions. If Management is of the view that there are no noncompliance and thus no follow-up actions are required, then Management will not issue a MAP but issue a Management Response which lays out why, in their view, no follow-up actions are required. MAPs are essential for public accountability as they signal what follow-up actions will be taken. MAPs also help separate the respective roles of the investigator (the EIBG-CM), whose role is to establish findings on noncompliance and related harm; the operational departments which need to assure that a financed investment is in compliance with the relevant policies/standards; and IFI governing bodies who need to position themselves on investigation findings and follow-up measures.

90. Almost all IAMs have a long-established practice for Operational Departments to respond to investigation findings with a MAP⁴³. Operations Departments do not always agree with all investigation findings of an IAM and may thus choose not to design follow-up measures in

⁴² For examples of MAPs laying out specific measures see MAP of ADB, Cambodia Greater Mekong Subregion Rehabilitation of the Railway Project, https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/FMO-and-DEG-Management-Action-Plan-LCT_English.pdf, and ADB Georgia Sustainable Urban Transport Investment Program Tranche 3 [https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-Board%20Approved-RAP-30June2017-ForWeb.pdf/\\$FILE/GEO-Board%20Approved-RAP-30June2017-ForWeb.pdf](https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-Board%20Approved-RAP-30June2017-ForWeb.pdf/$FILE/GEO-Board%20Approved-RAP-30June2017-ForWeb.pdf)

⁴³ The only exception is the ICM (DEG-FMO-PROPARCO) which in its policy does not provide for a MAP, but which has started to establish this practice in response to recent investigation reports.

response to the findings which with they disagree⁴⁴. The MAP is thus also an instrument for operational departments to express agreement or disagreement with investigation findings. In all MDBs, the MAP is approved by the Board of Directors. This approval process is essential as it establishes the commitment of an IFI for follow-up actions in case of non-compliance and related harm findings. The MAP is an instrument of public accountability.

91. It is up to the Governing bodies of the EIBG to determine the role of each one in exercising this oversight. This review is of the opinion that the practice of other MDBs for Board approval for all MAPs is difficult to apply at the EIBG. The EIBG-CM processes a significantly larger number of complaints than other IAMs (see Table 1). And the EIBG, unlike most MDBs, has a non-resident Board which is involved in a large number of tasks. For Board members to approve a MAP they need to become familiar with the investigation report to judge the appropriateness of proposed measures. EIBG Board members cannot do that for the large number of complaints processed annually by the EIBG-CM.

92. It is already the mandate of the Management Committee to provide approval of corrective actions when there is disagreement between the EIBG-CM and the Services on the recommendations proposed by the EIBG-CM. (see para. 1.8.2. CM Operating Procedures). In the past, there have been few complaints referred to the MC and thus few decisions taken by the MC. There appears to be a preference at the EIBG to seek solution to divergent positions through a consensus process. But not all disagreements can and should be resolved through a consensus process as it threatens the independence of the EIBG-CM and thus weakens the trust into the EIBG-CM as an effective accountability mechanism. The EIBG-CM needs an authorising environment to be able to pursue its independent investigation function. For that, it needs an actively engaged MC which plays a role in deciding in selected cases on disagreements between the Services and the EIBG-CM on follow up measures. This Review proposes that the MC assumes this role in case of disagreements on measures presented in a MAP.

93. This review proposes the following process related to MAPs. After completion of a Conclusions Report, Services should submit within 40 working day a MAP which lays out detailed, time bound follow up measures to correct noncompliance and related negative impacts. These measures must have been discussed and agreed upon with the Promoter on actions where the Promoter is involved. The MAP should also have been consulted with complainants. The Services submit the MAP to the EIBG-CM which responds within 10 working days and establishes whether the EIBG-CM considers the MAP measures adequate to respond to findings laid out in the Conclusions Report. In case of agreement, the MAP will be adopted and implementation will be subsequently monitored. The agreed MAP together with the investigation report will be submitted to the MC for information.

94. If the EIBG-CM is of the view that MAP measures are not adequate to respond to findings, then the MAP with the written comment of the EIBG-CM on the MAP will be forwarded to the MC. The MC then decides whether it wishes to approve the MAP as presented by the Services. If the MC finds the MAP insufficient, the MC will instruct the Services to resubmit a revised MAP. Such processes are routinely conducted by Boards in MDBs, which at times asks Management to

⁴⁴ See for example MAP by ICM for Togo, LCT project, where Operations Department does not take measures in response to negative impacts on coastal erosion https://www.deginvest.de/DEG-Documents-in-English/About-us/Responsibility/FMO-and-DEG-Management-Action-Plan-LCT_English.pdf.

resubmit MAPs. In all cases, the MAP will be uploaded on the EIBG-CM website and thus be in the public domain. It becomes an instrument of EIBG public accountability.

95. The Board, as the second-tier oversight structure, needs to be routinely briefed by the EIBG-CM during its semi-annual briefings on Conclusions Reports where there has been a disagreement between the Services and the EIBG-CM on the MAP. The Board needs to be briefed on how the MC decided in such cases on disagreement. Given the importance of the MAP as an instrument of EIBG public accountability, it is essential that such briefing to the Board during the semi-annual briefings are substantive in nature. MAPs which reflect disagreements typically represent more substantive systemic issues and it is important that both tier oversight structures – the MC and the Board – are adequately exercising their oversight functions.

Recommendations: Management Action Plan with Board approval in case of dissent

44. Introduce a MAP in which Services lay out follow-up measures to be taken in response to EIBG-CM investigation findings. Measures need to be specific and timebound.
45. If Services disagree with all investigation findings, they can decide not to define follow-up measures. A Management Response which states that no measures will be taken will be submitted to the MC for decision. If the MC agrees that no follow-up measures need to be taken, the Management Response will be published on EIBG-CM website.
46. If the MC disagrees with the Management Response, it will ask the Services to prepare a MAP which needs to be submitted to the MC for approval.
47. The MAP needs to be agreed upon with the Promoter for measures to be implemented by the Promoter.
48. The MAP needs to be consulted with complainants.
49. If Services are of the view that there are no noncompliance and related negative impacts, it will submit a MAP without follow up actions with a Management Response explaining their view why no follow-up actions are required. The Management Response will be published on the EIBG-CM website.
50. The EIBG-CM can continue to issue recommendations in Conclusions Reports but recommendations should remain high level and recommendations are not binding. No agreement with Services on these recommendations is required.
51. Services should submit the MAP for review to the EIBG-CM no later than 40 working days after issuance of Conclusions Report.
52. The EIBG-CM has 10 working days to respond to the MAP.
53. If the EIBG-CM finds the proposed MAP insufficiently responsive to findings of the Conclusions Report, then the MAP is submitted to the MC for approval.
54. If the MC considers the proposed MAP insufficiently responsive, the MC will ask Services to resubmit a revised MAP for MC consideration.
55. All MAPs, whether agreed with the EIBG-CM or approved by the MC, will be posted on the EIBG-CM website and subsequently monitored by EIBG-CM.
56. The Board will be substantively briefed by the EIBG-CM during semi-annual briefings on MAPs on which there was disagreement between the EIBG-CM and the Services and on decisions taken by the MC.
57. All EIBG-CM investigation reports and all MAPs will be routinely sent to the MC and the Board for information.

4.3.5. Follow-up and monitoring

96. The EIBG-CM Policy and Procedures state that the EIBG-CM will follow up with the Services on the implementation of agreed corrective actions and recommendations (Policy para.

5.3.2 EIBG-CM and Procedures para. 1.10.1). The EIBG-CM established an internal system of monitoring in 2020⁴⁵. It checks quarterly with the Services to obtain information on the status of implemented actions and tracks progress with a matrix system. The matrix is extensive. In 2024, about 50 complaints with 68 action points were being monitored. One drawback of this system is that information is obtained through the Services, complainants are generally not consulted except in those cases where the EIBG-CM remained in contact with the complainant(s) and in the rare cases when the EIBG-CM conducts a site visit for monitoring. Given the large number of cases and the constrained budget of the EIBG-CM, the review recognises that project-specific monitoring for each complaint with independent site visits – as is often carried out in other IAMs – is not feasible. However, the present monitoring system – even with the large number of cases – needs to be conducted in a more substantive fashion. Monitoring cannot only rely on information provided by the Services. Monitoring requires an independent assessment of the EIBG-CM and this includes consultation with the complainants and affected people as well as more frequent site visits than presently conducted.

97. Another element of effective monitoring is disclosure of monitoring results. As a public accountability mechanism, the EIBG needs to report on what happened after a Conclusions Report found maladministration. There is presently only very limited disclosure. Based on the tracking captured in the EIBG-CM monitoring matrix system, aggregate progress is currently reported to the Management Committee and the Board. There is not, however, any regular reporting in the public domain on progress of implementation on corrective actions; such information is only conveyed through the Annual Report for the few complaints for which monitoring is being closed⁴⁶. The very skeleton public reporting on implementation of remedial actions is a significant shortcoming of the EIBG-CM as an accountability mechanism.

98. To improve the effectiveness of the EIBG-CM's monitoring efforts, this review proposes a two-pronged monitoring approach:

- (i) issue an annual comprehensive monitoring report including all complaints under monitoring;
- (ii) for selected complaints with particularly significant maladministration and related negative impacts, conduct site visits and issue a complaint specific monitoring report⁴⁷;
- (iii) if a MAP is introduced in a revised policy, monitoring should focus on measures presented in the approved MAP;
- (iv) More substantive reporting should take place to the Board where important delays and failures to implement significant remedial measures are being highlighted.

99. Both the aggregate monitoring reports including all complaints and the complaint-specific monitoring reports should be issued on the EIBG-CM website in the public domain. In this respect, the EIBG-CM could follow the new approach of the CAO Compliance Monitoring, which is currently being tested on a pilot basis. An annual Omnibus Case Report is presented to the IFC Board and uploaded on the CAO website⁴⁸. In addition, for selected complaints more comprehensive project-specific monitoring reports are prepared, based on a site visit. Monitoring for the complaints included in the Omnibus report is based on (i) a review of IFC MAP actions, (ii)

⁴⁵ See The Complaint Mechanism, Guidelines for the monitoring on the implementation of the EIB-CM's Action Points, 17 January 2022.

⁴⁶ See for example Complaints Mechanism 2022, pages 26-27.

⁴⁷ The EIBG-CM informed the Review Team that for two complaints case specific monitoring with site visits were conducted in 2024 and monitoring is ongoing.

⁴⁸ See CAO Compliance Monitoring Omnibus Case Report Q4 2023 and Q4 2024.

a review of progress reports submitted by IFC and engagement of the CAO with the IFC project team to seek clarifications if needed; (iii) engagement with complainants and their representatives to discuss and document their views on the adequacy of IFC actions and implementation; (iv) review of supporting documents received from parties. Importantly, the monitoring is not mainly or only based on information received from the Services but systematically reports the status of MAP implementation by the operational department of IFC and the complainants, complemented by the assessment of CAO itself.

100. The Review Team recommends that the EIBG-CM establishes such a monitoring approach on a pilot basis with a subset of complaints. The approach can be tested and then gradually be expanded to encompass the whole set of complaints to be monitored. This would replace the current quarterly update reporting. The frequency of monitoring should be reduced. Quarterly updates are not required as many actions require more than three months. At the beginning the frequency of the matrix monitoring updating should be reduced to six-month intervals; after completion of the pilot testing, an annual monitoring process can be introduced. The Services should be required to submit an annual written update report, rather than the EIBG-CM calling and asking for specific information. A key component of such annual monitoring must be consultations with complainants on the implementation status and a review of EIB supervision report and document related reports which are typically issued as part of project implementation. Selected site visits should complement the information obtained from complainants. This review recommends the introduction of a MAP (see 5.3.3). If a MAP will be introduced in a revised EIBG-CM policy, then monitoring should focus on measures agreed upon in the MAP.

101. Finally, the monitoring process should be closed once it becomes clear that no further progress is likely to be made. The present portfolio of projects to be monitored contains a number of projects where no further actions are taken. Here the approach of the CAO (Policy para. 145) is advisable: monitoring processes are closed when the CAO determines (i) that substantive commitments set out in the MAP have been effectively fulfilled; or (ii) that there is no reasonable expectation of further actions to address non-compliance findings (following engagement with Management and/or the Board).

102. In cases where no significant further progress can be expected, the EIBG-CM should close the monitoring process and issue a final monitoring report. This report should lay out which remedial measures have and have not been implemented and if possible, provide explanations. This closing report should be sent through the Management Committee to the Board and uploaded on the EIBG-CM case website.

Recommendations: Follow-up and monitoring

58. The current monitoring process, which consists of quarterly information obtained from the Services to define the status of implementation should be replaced by a more substantive but less frequent review process consisting of a systematic review of information materials provided by the Services, project related documents, consultations with complainants and their representatives and selected site visits.
59. This review should be conducted at most at six-month intervals or alternatively yearly.
60. A review document presenting monitoring results should be shared internally with the Management Committee and Board and published on the EIBG-CM website.
61. The consolidated monitoring of all complaints should be complemented by selected in-depth complaint specific monitoring with a site visit and disclosure of this complaint specific monitoring report on the EIBG-CM website. Such in-depth monitoring should be

conducted for complaints presenting significant noncompliance and related negative impacts.

62. The present very skeleton reporting on closed complaints provided in the public annual reports needs to be replaced by regular disclosure of consolidated monitoring reports and the complaint specific monitoring reports. Reports must be posted on EIBG-CM website.
63. Monitoring of complaints on which no further progress on implementation of remedial actions can be expected should be terminated. A monitoring report be issued that the complaint is closed with unsatisfactory or only partially satisfactory implementation of remedial actions. This closing report should be uploaded on the EIBG-CM website.
64. If a revised EIBG-CM Policy introduces a Management Action Plan, monitoring needs to focus on agreed MAP measures.

4.4. Dispute resolution

4.4.1. *Dispute resolution as an IAM function*

103. Virtually all IAMs have a dispute resolution function along with a compliance function. The basic distinction between the two functions is that dispute resolution seeks to resolve the concerns raised by the complainants about actual or potential impacts on them through voluntary dialogue and negotiation with the project sponsor, supported by the IAM and consultant mediators; while compliance seeks to determine whether the institution followed its own policies or not, and if not, whether non-compliance contributed to negative impacts on the complainants.

104. Both dispute resolution (DR) and compliance may lead to remedial action. Dispute resolution is intended to promote constructive communication and mutual understanding between the complainants and the promoter; to clarify what the actual risks or impacts are and what is causing them; and to produce remedial action where warranted through an agreement between the project promoter (and sometimes other local actors) and the complainant (and sometimes associated communities or groups). Dispute resolution processes do not produce compliance findings regarding the institution or the promoter.

105. During a dispute resolution process, the dispute resolution function maintains communication with the IFI's project staff and management. There may be opportunities for project staff and management to play a constructive role in supporting project promoters to participate in good faith. Where necessary, the project team may also hold the promoter accountable for meeting environmental and social performance requirements.

106. In most IFIs, dispute resolution as a function is valued by management and project staff as a helpful tool for dealing with project issues. However, there are cases in which IAM staff and their operations counterparts do not agree on the structure of the dispute resolution process, the participation of the complainants and the promoter or on the appropriate roles for the IAM and operations.

4.4.2. *Dispute resolution in the EIBG-CM mandate*

107. Mediation and problem solving have been explicitly included in the mandate of the EIBG-CM since 2010, when they were included in its Principles. However, both the 2010 principles and the current EIBG-CM Policy indicate that the EIBG-CM is 'predominantly compliance focused' (para. 5.3.3). There is a tension between this statement and the statement found in the section 1 on Methodology of the inquiry:

Whenever possible, and giving due consideration to the type of complaint, the EIBG-CM establishes a collaborative resolution process with a view to resolving the dispute by (i)

achieving a better and common understanding; (ii) improving the degree of trust between the parties and (iii) seeking to identify a common agreed solution (para. 6.2.4).

108. This ambiguity about the role of dispute resolution in the mandate is not helpful to external stakeholders, the EIBG’s management and Services, or the EIBG-CM itself. As suggested by the EIBG-CM in a recent note to the file on dispute resolution, it would be more constructive for the Policy not to state any preference between the compliance and dispute resolution functions⁴⁹. Procedures should make it clearer how the EIBG-CM determines when it is appropriate to undertake compliance investigations and when it should undertake dispute resolution (see the discussion and recommendations on initial assessment in Section 4.2).

109. In addition, the current ambiguity about the role of dispute resolution in the EIBG-CM mandate may be influencing the resourcing of the DR function. As discussed further below, the function is not currently staffed or resourced at a level that enables it to function at full effectiveness. As a result, there is a self-perpetuating cycle of the preponderance of cases going to compliance, reinforcing the view that DR is a secondary function, when in fact there might be more effective use of DR if the function were better resourced.

110. Finally, there is extensive terminology in both the Policy and the Procedures that refers to “Mediation” as the function and requires the Mediation function to produce Mediation Agreements and Mediation Reports. The Policy and Procedures also refer less formally to “dispute resolution” and “problem solving” as synonyms for the process this function uses to resolve complaints. In practice, the EIBG-CM refers to the function as Dispute Resolution and the function produces “Dispute Resolution” reports.

111. The term “mediation” is more limiting than the term “dispute resolution”; mediation is one among several different approaches that may be used to achieve the goal of dispute resolution. The term “dispute resolution” is used conventionally by most IAMs to refer to this function. It would be useful to align the Policy and Procedures in using the term “Dispute Resolution” to refer to the function.

Recommendations: Dispute resolution mandate

65. Revise the EIBG-CM Policy and Procedures to make it clear that:

- Compliance, Dispute Resolution (not “Mediation”), and Advisory are the three functions of the EIBG-CM;
- Dispute Resolution as a function uses a family of approaches, including but not limited to mediation, to achieve the goal of dispute resolution; and
- the EIBG-CM does not have a fixed preference between dispute resolution and compliance. Rather, it uses the initial assessment process to determine which approach to use on a case-by-case basis.

4.4.3. Dispute resolution operating procedures and their implementation

112. In other IAMs, there is usually a separation between initial assessment, which is focused on determining whether to proceed with compliance or dispute resolution, and the subsequent step of developing a dispute resolution process or conducting an initial compliance assessment. The EIBG-CM’s current Initial Assessment procedures seek both to establish facts that are the starting point for a compliance investigation, and to determine the parties’ interest in a dispute resolution process. These two objectives are difficult to accomplish together, because initial

⁴⁹ EIBG-CM, « Reflections on the EIBG-CM’s Dispute Resolution practice, » Note to file, dated 28 June 2023.

findings of fact by the EIBG-CM may lead the complainant or the promoter to view the EIBG-CM as ‘for or against’ them and shift their incentives to participate in dispute resolution.

113. Another challenge with Initial Assessment is that the procedures currently call for detailed Terms of Reference for mediation to be attached to the initial assessment report, with the formal endorsement of the parties to the mediation. The review has recommended focusing Initial Assessment only on determining whether to proceed with dispute resolution or compliance review, referring the case to the Services for prompt resolution, or closing it at assessment if none of these pathways is appropriate (see section 4.2 above). The Initial Assessment should therefore be limited to a very brief review of issues raised in the complaint, and the determination of the EIBG-CM on whether to undertake dispute resolution or compliance investigation.

Recommendations: Dispute resolution operating procedures

66. Revise the EIBG-CM Procedures to make it clear that:

- Initial Assessments do not include fact finding regarding EIBG or promoter compliance or harm to complainants;
- DR staff are directly involved in every initial assessment to talk with the complainant about the option to pursue a dispute resolution process; and
- The primary criterion for directing a complaint to dispute resolution after initial assessment is the complainant’s informed preference for dispute resolution.

4.4.4. Initial DR assessment

114. Currently the DR function begins the process of engaging with complainant, promoter and the project team during initial assessment (when there are sufficient DR staff resources available). As noted in section 4.2, this review recommends that the DR function undertake a more detailed assessment after the decision to proceed to DR has been made as the outcome of the Initial Assessment.

Documentation related to the Initial DR Assessment

115. According to the EIBG-CM’s current Procedures, if the complainant and promoter agree to dispute resolution during the initial assessment, the DR function is required to provide a detailed Terms of Reference for the “mediation” (para. 2.5.2) and to provide a Mission Letter from the EIBG-CM Head to the complainant, the promoter, any other parties who will be participants in the process, and the relevant DGs of the Services (para. 2.5.3). Given that this Review is recommending a separation between the Initial Assessment and a subsequent Initial DR Assessment, neither of these current requirements should be maintained in relation to the publication of the Initial Assessment Report. Neither should they be required as components of the Initial DR Assessment.

116. It is not considered good practice to make the detailed terms of reference for a dispute resolution process publicly available, because they may address sensitive and controversial issues. The Initial DR Assessment should clarify key issues, the interests and perspectives of each stakeholder on each issue, options that might be considered as ways to address the issues, and ground rules and process steps that could guide the dispute resolution process⁵⁰. However, the DR function should be allowed to use its judgment on a case-by-case basis on the best way to

⁵⁰ For good practice in assessment, see S. Carpenter, “Choosing Appropriate Consensus Building Techniques and Strategies” and L. Susskind and J. Thomas-Larmer, “Conducting a Conflict Assessment,” Chapters 1 and 2 in L. Susskind et al., eds., *The Consensus Building Handbook*. Thousand Oaks, CA: Sage Publications 1999.

document and present a) its assessment of stakeholders, issues, and options and b) a proposed process for seeking resolution of the dispute.

117. The DR function should update the status of the case on the EIBG-CM's case registry when the initial DR assessment is completed and should state whether the case will proceed to dispute resolution or transfer to compliance. The DR function should not be required to make any more detail of its assessments and process proposals public unless it believes it is in the interest of the DR process to do so. Rather, it should provide documentation to the stakeholders that reflects its assessment of issues, stakeholder interests, and options, and offers its proposals for the dispute resolution process. The DR function should be guided by the stakeholders' responses in finalising these documents and using them to advance the process. All assessments should be included in the DR function's internal case documentation system.

118. Regarding the Mission letter, it may be appropriate to include in the EIBG-CM Procedures a guideline that the DR function should review each of its initial DR assessments with the Head of the EIBG-CM before presenting the assessment to the stakeholders. It should not be necessary for the Head of the EIBG-CM function to provide a formal Mission Letter authorising the DR process to the stakeholders, unless the stakeholders themselves request such documentation.

Engagement with the EIBG project team

119. Another important element of the initial DR assessment is the need for the EIBG project team (from the Projects, Portfolio Management and Monitoring, Operations, and/or EIBG Global Directorates, as appropriate) to engage with DR staff to clarify the issues raised by the stakeholders, and to confirm the role that the project team will play in supporting the DR process. Since the DR function was strengthened by the 2018 EIBG-CM Policy, there has been limited engagement of project teams in most DR processes, according to both EIBG-CM staff and counterparts in the relevant Directorates. This is due both to the limited human resources available to project teams to cover "extra" work such as involvement in a DR process, and to limited understanding among counterparts in the relevant Directorates of how the DR process works and what roles they can play.

120. In other IAMs, project teams play different roles depending on the case. In some cases, the role of the project team may be primarily to monitor the progress of the DR process. In others, it may be appropriate or necessary for the project team to support the promoter's participation in the DR process, both by responding to promoter questions and concerns about the impact of the DR process on the project, and by clarifying the IFI's requirements regarding environmental and social performance that are relevant to the case. In some instances, the project team may need to be proactive in working with the promoter and other stakeholders (such as public authorities) to support action needed to resolve the issue, especially if such action is also necessary to ensure that the promoter is meeting its environmental and social performance requirements.

Engagement of a suitable facilitator/mediator

121. The DR function also should use the initial DR assessment to identify a suitable process facilitator or mediator. It is good practice to involve the complainants, promoter and any other stakeholders who are expected to participate in the process of choosing a facilitator or mediator. At a minimum, the complainants and promoter should be able to speak with one or more candidates identified by the DR function and give their feedback on their suitability before the DR function selects and contracts them. Feedback from complainants and promoters involved in recent DR cases suggests that the process of selecting facilitators/mediators has gone well, and that the facilitators/mediators selected were well-qualified and effective. From the DR function's

perspective, the main challenge is to find qualified facilitators/mediators for cases where there is not a well-developed local cadre of professionals in these roles. The DR function has been proactive in developing its network of facilitator/mediators and in publicising its interest in finding qualified professionals⁵¹. This effort should continue, along with initiatives to share information about qualified professionals with other IFIs' IAMs.

Timeframe for Initial DR Assessment

122. Finally, the initial DR assessment should be timebound, to avoid creating a situation where the question of whether and how to commence a dispute resolution process becomes a long negotiation among the stakeholders. The Review recommends that initial DR assessments be completed within 60 working days (12 weeks) of the finalisation of the Initial Assessment. At 60 days, there should either be an agreement among the parties to proceed to dispute resolution, or an option for the complainants to transfer the case to compliance for initial compliance assessment.

Recommendations: Initial assessment

67. Revise the EIBG-CM Procedures to clarify that:
- EIBG-CM Initial Assessments that include a decision to transfer the case to DR do not require either a ToR for mediation/dispute resolution or a Mission letter from the EIBG-CM Head.
 - Initial DR assessments become a procedural requirement for the DR function once a case is transferred from Initial Assessment;
 - The Head of the EIBG-CM reviews Initial DR Assessments before they are finalised;
 - The output of an Initial DR Assessment is either an agreement to begin DR, supported by case-specific documentation of that agreement among the participating stakeholders, or a decision not to proceed to DR, in which case the complainant has the option to transfer the case to compliance for initial compliance assessment;
 - The timeframe for Initial DR Assessment is 60 working days.
68. Clarify the EIBG-CM Policy regarding the obligation of the Services to support dispute resolution:
- Make it explicit in the Policy that EIBG project teams have an obligation to consult with the DR function both during initial DR assessment and in the ongoing process of dispute resolution; to support the voluntary engagement of the promoter in dispute resolution in consultation with the DR function; and to ensure that the promoter addresses issues raised in the DR process that are linked to the promoter's EIBG environmental and social performance requirements.
69. Support current DR function good practices in identifying qualified facilitators/mediators:
- Ensure that the DR function has adequate human and financial resources to identify qualified facilitation/mediation professionals, especially outside the EU, and to contract them.

4.4.5. Dispute resolution process

123. The Review examined documentation of the 12 DR cases addressed using the 2018 Policy; interviewed DR staff regarding their experiences with seven of these cases; and conducted interviews with complainants, promoters, and mediators in two cases (see table 7 below). Overall, the DR function is overseeing and managing DR processes effectively, given the constraints on staff and travel. Following are assessments of the DR function's process

⁵¹ EIBG-CM, "Reflections on the EIBG-CM's Dispute Resolution practice", op. cit.

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management, including structuring of dispute resolution processes, using appropriate strategies to support resolution, seeking timely resolution or case closure, and monitoring the implementation of agreements reached through dispute resolution. The review also assesses that involvement of EIBG project teams in DR processes has been limited and could be strengthened.

Table 7. Overview of Dispute Resolution cases since the 2018 Policy

EIBG-CM Case number	Case name	Case description	DR Process	DR Outcomes
SG/E/2019/06	Banja Luka - Dobo Motorway [Bosnia and Herzegovina]	Impacts of motorway construction on residents	Joint site visits and fact-finding. Facilitated dialogue (local facilitator) to clarify and seek agreement on community impacts and their mitigation	Agreement reached between promoter and complainant on six site-specific issues. Five outstanding impact issues referred to compliance.
SG/E/2019/15	Tomato Processing Line [Ukraine]	Property rent	Withdrawal from the complainant	Closed
SG/E/2019/08	Bangalore Metro Rail Project - Line R6 [India]	Impact of metro station construction on church land, religious services, and trees	Facilitated dialogue (local facilitators) to improve understanding of issues and generate new options. Church authorities did not participate in the process, but did agree on implementation of agreements reached during the DR process.	Agreement reached between church congregants and promoter on mitigation of construction impacts. Promoter revised land use plan to reduce amount of land needed from the church. Disagreement on authority of promoter to take land remained, but EIBG-CM determined no transfer to compliance.
SG/E/2020/02	Nepal Tanahu Hydropower Project	Impacts of hydropower project construction on indigenous community's land, livelihood and cultural resources, compensation for titled and non-titled land in the reservoir area	Initial agreement to dispute resolution by complainants and promoter. Process led by the ADB-Office of the Special Project Facilitator (OSPF) with EIBG-CM participation. Covid delayed initiation of dispute resolution. Capacity building for complainants and two mediated meetings held in 2022 with ADB-OSPF leading, followed by a joint problem-solving mission to interact with stakeholders in 2023.	Ongoing

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EIBG-CM Case number	Case name	Case description	DR Process	DR Outcomes
SG/E/2021/10 and SG/E/2021/11	Nepal Tanahu Hydropower Project	Compensation for non-titled and community land users (indigenous and Dalit) in the reservoir area of a future hydropower scheme. Impact on livelihood and cultural resources.	Extended mediation process (local mediator) to seek resolution of compensation claims, with promoter and complainant representatives and CSO advisers to complainants.	No agreement on land compensation issues. EIBG-CM determined impasse and made decision to end DR and refer to compliance.
SG/E/2021/16	Malawi NRWB Water Efficiency [A&B]	Impacts of water line improvement on residents' property and water services.	Mediated dialogue (local mediators) between promoter and two local communities to review and clarify procedures for land and property compensation, review compensation decisions for some residents, address local impacts on water service provision and provide other amenities to the community. Joint fact-finding with one resident regarding damage to a house.	Agreement reached on compensation and mitigation measures between promoter and all complainants from one community and nearly all complainants from two other communities. Joint fact-finding process closed with expert's report. Monitoring ongoing.
SG/E/2021/09	Pune Metro Rail Project [India]	Impacts of metro station construction on licensed fruit vendors, residents, tree cover, places of worship and shop stalls. Compensation for loss of access for informal fruit vendors.	Mediated dialogues (local mediator) with promoter, individual complainants and complainant group representatives.	Spice vendors agreed with the promoter on clarifications about the timing and placement of new shops. No formal agreement for the relocated family but EIBG-CM judged the agreed actions and promoter's plan to resettle were adequate. Trees and places of worship addressed to complainant's satisfaction. Informal fruit vendors agreed with promoter on compensation; complainant claims on shop stalls still in litigation with a government agency (not the promoter). Monitoring ongoing.

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EIBG-CM Case number	Case name	Case description	DR Process	DR Outcomes
SG/E/2022/06	Bangalore Metro Rail Project - Line R6 [India]	Impacts of metro station construction on a training centre for the deaf.	Mediated process (local mediators) between promoter and complainants to clarify and address concerns of school faculty and students.	Agreement reached on most issues, including completion of training activities, mental health, jobs, student stipend, communications and a new training centre. No agreement on additional financial compensation. Monitoring ongoing.
SG/E/2022/07	Zenata Urban Development [Morocco]	Resident eviction and loss of livelihood	Mediated dialogue	Ongoing
SG/E/2022/14	Railway Nis-Dimitrovgrad [Serbia]	Housing eviction linked to resettlement for construction of new rail line	Mediation involving complainants, promoter, building owner, and municipal government to resolve complex legal status of tenants subject to eviction.	Ongoing
SG/E/2022/16	Lom Pangar and Nachtigal Hydro-power [Cameroon]	Land, livelihood and environmental impacts of dam project on downstream communities	Mediation process focused on environmental, land and livelihood impacts began with participation of complainants and promoter; promoter subsequently withdrew.	Lom Pangar complaint closed and referred to compliance after Lom Pangar promoter withdrew. Nachtigal complaint closed based on evidence of ongoing opportunities for grievance resolution between promoter and concerned communities.

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EIBG-CM Case number	Case name	Case description	DR Process	DR Outcomes
SG/E/2023/08	Appui au Secteur de l'Eau Potable [Tunisia]	Property and livelihood impacts of water treatment plant on local farmer	Mediation between promoter and complainant with active participation of the EIBG project team to ensure compensation procedures aligned with EIBG standards.	Agreement reached on compensation and access to land.

Structuring of dispute resolution processes

124. The DR function has structured processes well in a number of cases. First, DR staff and local mediators have appropriately scoped and bounded the issues for mediation. For example, in Nepal Tanahu (SG/E/2021/10 and SG/E/2021/11), the DR team worked with the complainants and promoter to limit the scope to land compensation, recognising that the promoter had already made commitments on other issues raised by the complainants and there were other forums to handle those concerns. Second, they have sought to promote effective representation of affected stakeholders and to segment mediations based on stakeholders and issues. For example, in Pune Metro (SG/E/2021/09) the mediation involved four sets of stakeholders with distinct concerns regarding the construction impacts of a metro station, and their concerns were handled in parallel. However, complainant representation has presented challenges in other cases, including one in which the lead representative of a community was motivated primarily by individual concerns, and the DR function with local mediators were not able to work with the community to find another way to represent its concerns. Third, they have coordinated with the IAMs of co-financing IFIs to limit duplication and promote efficient case management. For example, in Nepal Tanahu (SG/E/2020/02) the DR function coordinated effectively with ADB's Office of the Special Project Facilitator (OSPF), giving OSPF the lead on engagement with the parties.

Using appropriate strategies to support resolution

125. In general, the DR function, in close collaboration with local mediators, has identified appropriate strategies for supporting resolution. For example, in the Banja Luka-Doboj Motorway case (SG/E/2019/06), where there were disputes about whether the promoter had fully mitigated construction site impacts in several spots adjacent to the concerned community, the parties agreed to inspect the sites together, and the promoter committed to address the remaining issues after that visual inspection. In the Malawi NRWB case (SG/E/2021/16), where there were accusations of corruption and other departures from the regulations for determining compensation for construction impacts, the mediators engaged the promoter and representatives of the Ministry of Lands to provide a detailed review of the procedures to the complainant communities, and then to review individual cases when requested. However, there have been cases where the promoter has not been as willing to engage with complainants to clarify compensation methods and to review compensation decisions. There were significant challenges with the promoter in addressing compensation issues in the Nepal Tanahu cases and in the Lom Pangar dam case, where the promoter withdrew.

Working effectively with local facilitators/mediators

126. The DR function has successfully recruited and collaborated with local facilitators/mediators in most of its cases. After establishing the main issues to be addressed during the initial assessment process, the DR function has identified qualified mediators within the country or region to work with the complainant, promoter, and other stakeholders, confirmed the parties' willingness to work with them (or responded to the parties' concerns by identifying mutually acceptable alternatives). During the process, the DR function has given the facilitators/mediators good process guidance while allowing them to use their professional judgment in their interactions with local stakeholders. Mediators/facilitators interviewed for the Review indicated satisfaction with the way that the DR function had maintained close communication, advised on significant process issues (e.g. complainant representation; engagement with the promoter; review of potential agreements, etc.) and engaged directly with the parties when appropriate (e.g. to clarify the DR process and its relationship to the EIBG's environmental and social standards).

Seeking timely resolution or case closure

127. There is a risk in any complex dispute resolution process that the parties reach an impasse, but are reluctant to end the process, each hoping that the other will decide to compromise rather than maintain a stalemate. There are also situations in which parties become internally divided on the way forward and cannot make a collective decision on whether or how to proceed. In these situations, the DR function faces difficult judgments on whether to continue or to end the dispute resolution process. There is no fixed rule about how long a process should take, or about when it makes sense to bring it to a close, but in general, it is the responsibility of the DR function to make a determination as to the cause(s) of the impasse, confirm the reality of impasse with the parties, and then seek clarity on whether they see any way to move forward and if so, whether they are willing to move.

128. The DR function appears to have handled at least two of these situations with good judgment. One is the Nepal Tanahu case (SG/E/2021/10 and SG/E/2021/11) in which the promoter did not appear to be willing or able to respond to the complainants seeking compensation in a timely fashion to avoid their displacement by the filling of the dam. In this case, the DR function brought the process to a close and transferred the case to compliance⁵². Another is the Nachtigal hydropower case (part of SG/E/2022/16), in which the DR function determined that despite the complainants' wish to continue the process, the complainants had adequate recourse for their concerns through other existing grievance mechanisms (those of the promoter and of other co-financing IFIs).

Monitoring implementation of DR agreements

129. The DR function has established a good practice of monitoring the implementation of agreements reached in DR processes and publishing monitoring reports at 6-12-month intervals. This practice should be continued but should also specify an end to monitoring and the publication of a final monitoring report. The final report should normally be published no more than one year after agreements are reached, unless there is a major, outstanding implementation issue that requires direct engagement by the DR function with the parties. Otherwise, there is a risk of diverting limited staff resources to monitoring cases where minor issues remain open, or to seeking continuing involvement in cases with unresolved issues where the DR function does not have the capacity to support further efforts at resolution. The EIBG-CM Head should review the status of DR monitoring on open cases at the one-year mark, and every 6 months thereafter for cases with ongoing monitoring. Those reviews should determine whether continued monitoring is appropriate, or whether the DR case should be closed. If there are still significant outstanding issues that are very unlikely to be resolved, the complainants should be asked whether they wish to transfer unresolved issues for initial compliance assessment.

Roles of EIBG project teams in DR processes

130. There has been variable involvement of EIBG project teams in DR processes. One recent positive example is the Water Sector Support [Tunisia] project (SG/E/2023/08), where the project team appears to have played an active role along with the DR function in ensuring that the promoter provided compensation aligned with EIBG's standards, which are higher than those in Tunisian national law. Yet in most other cases, the EIBG project team appears to have played a relatively limited role. This may be appropriate in some cases, as long as the promoter has an interest in

⁵² While the first Nepal Tanahu case (SG/E/2020/02) has continued for four years, this appears to be due in part to the Covid pandemic, which seriously impeded the work of the DR function in 2020 and 2021.

participating in the dispute resolution process, adequate capacity to do so, and a good understanding of its responsibilities with regard to EIBG's environmental and social standards. In other cases, there is an open question about whether more active involvement of the EIBG project teams could help the promoter more effectively engage and resolve issues in alignment with its environmental and social commitments and EIBG requirements. In two cases examined in depth, the promoters concerned indicated that they wished that the EIBG project team had a) made it clearer to them what the division of responsibility would be between the EIBG project team and the EIBG-CM's DR function, and b) had been more proactive in clarifying the promoter's responsibilities regarding participation in the DR process and in supporting the promoter's participation.

131. Finally, there are dispute resolution situations in which the complainants' concerns directly reflect failures of the promoter to meet EIBG's environmental and social standards. In these cases, the EIBG project team can and should exert leverage on the promoter to ensure that EIBG standards are met. The DR team cannot act as an enforcer of EIBG standards within the DR process; only the EIBG project team can do so. In such situations, active and effective participation of the EIBG project team can be key to resolution, and the absence of participation can lead to stalemate and the initiation of a compliance process. That is generally not the best outcome for the complainant, the promoter or the EIBG.

Recommendations: Roles of EIBG project teams in DR processes

70. The DR function should continue to operate using good practices for structuring, supporting and bringing closure to dispute resolution processes. It should collaborate with local mediators/facilitators to document lessons learnt from each case in order to evolve and refine its practices over time and should regularly share those lessons with the facilitators/mediators in its network.

71. The EIBG-CM Procedures should be revised to:

- Eliminate the requirement for DR cases to close within 240 days (2.6.1). Instead, the Procedures should require a joint assessment by the EIBG-CM Head and the DR team of all DR cases that are still ongoing one year after the start of the DR process (formally, this could be the date of the initial DR assessment) , and every six months thereafter, to ensure that there is still a reasonable likelihood of resolution, or if not, to bring the case to closure. In DR cases that are closed with significant issues outstanding, the complainant should have the option to transfer the outstanding issues for initial compliance assessment⁵³.
- Authorise the DR function to monitor the implementation of DR agreements for up to 12 months after the agreement was reached and provide a final monitoring report to close the case. Monitoring should only continue beyond 12 months if there is a clear justification for the continued involvement of the DR function. In DR cases that are closed after monitoring with significant issues outstanding, the complainant should have the option to transfer the outstanding issues for initial compliance assessment.
- Make it clear that the timeframe for initial compliance assessment starts when the DR case is transferred to Compliance from DR.

72. The EIBG-CM should expand its outreach to the relevant EIBG Services, in collaboration with EIBG project team members who have been effective partners in dispute resolution processes, to share case experience and encourage more proactive and consistent EIBG project team engagement in dispute resolution processes.

⁵³ The EIBG-CM Policy (para. 4.4.4) already provides the option for extension of deadlines for mediation of E and F cases (environmental/social and governance issues), but it would be clearer for the policy to state explicitly the expectation that DR cases should close within one year, and that open DR cases will be reviewed at the one-year mark and every six months thereafter.

4.4.6. Capacity/resources for the DR function

132. The most significant issue currently influencing the operational effectiveness of the DR function is the lack of human resources. There appears to be a significant imbalance in staffing between the compliance and dispute resolution functions with only two dispute resolution officers reporting to one head of unit. Although there is considerable variability in the level of effort required to manage a dispute resolution case, a team of this size cannot effectively manage a large number of open cases with significant numbers of parties and issues.

133. In addition, the current level of staffing severely constrains the team's ability to assess new cases. This work is particularly time intensive for dispute resolution, because it needs to be carried out by EIBG-CM staff themselves, prior to contracting with outside mediators or other consultants. According to the DR team, there have been several initial assessments (not including preventive cases which are transferred to the Services) where the DR function has not been able to participate to determine the potential for dispute resolution. The table below shows the level of DR function participation in initial assessments since 2022.

Table 8. DR Function participation in Initial Assessments, S2022 - Q3 2024

	2022 (S2)	2023	2024 (Q1-Q3)	Total
Number of cases registered as SG/E/	21	27	17	65
Number of new cases analysed for DR potential	16	9	10	35
% of registered cases where DR potential was analysed	76%	33%	59%	54%

Source: EIBG-CM data

Note: Preventive cases are not included.

134. While this Review recommends compressing the initial Assessment, DR staff will need to perform a more extensive initial DR assessment on all cases referred to DR after initial assessment. The current staffing constraint on initial assessment should be seen as indicative of potential constraint on the capacity of DR staff to conduct initial DR assessments as well.

135. There is also a need for adequate financial resources to hire local mediators and other kinds of expertise (sometimes accompanied by international counterparts). Some IAMs handle this need by creating contingent budgets, recognising that there can be considerable year to year variation in the cost of dispute resolution, depending on the number, intensity, and location of cases.

Recommendations: Capacity/resources for the DR function

73. Provide adequate resources to the EIBG-CM to enable DR team to:

- Participate effectively in every initial assessment, to ensure that the complainant is well-informed about DR and able to make an informed choice between DR and compliance.
- make field visits during initial DR assessment (and in exceptional cases during Initial Assessment) if the complainants and/or promoter face significant barriers in engaging with and understanding dispute resolution and the EIBG-CM DR option via virtual communication;
- organise and oversee each DR process, including field visits where needed to oversee complex cases; and
- hire qualified local/regional/international mediators when required.

4.5. Advisory

136. The Policy gives the EIBG-CM an advisory mandate, stating that 'the EIBG-CM provides its written advice to the EIBG Management and/or the EIF CE/DCE internally on broader and systemic

issues related to policies, standards, procedures, guidelines, resources and systems on the basis from lessons learnt from complaints' (para. 5.3.1). In addition, Conclusions Reports can include recommendations or suggestions for improvements to existing policies and/or procedures. The EIBG-CM in collaboration with the respective Services then monitors the implementation of these Policy adjustments (para. 6.2.6).

137. EIBG-CM staff informed the Review Team that case specific recommendations for improvements are often provided, but there is not an established practice of providing advisory notes on systemic lessons learnt from case handling. Based on the information available to the review panel, only one advisory note has been issued since the introduction of the 2018 Policy reforms⁵⁴. It was intended to “advise the Bank management and Services in the identification and closing of potential gaps for an effective implementation of its ESSF [Environmental and Social Sustainability Framework]” (p.1). It did not receive a positive response from the Services directly involved in project work, who questioned the EIBG-CM’s ability to draw general conclusions from a small sample of projects and challenged the conclusions on substantive grounds as well⁵⁵. The advisory note was not made public. Reference to the note was included in the EIBG-CM’s next semi-annual report to the Board.

138. The absence of an active advisory function is in stark contrast to the practices of other IAMs with established advisory functions. These IAMs regularly issue advisory notes on lessons learnt from case handling and publish them on their websites⁵⁶. Such advisory notes are considered an important way for complaint mechanisms to provide lessons learnt to help prevent recurrence of non-compliance and related harm. Many IAM mandates specifically state that IAMs should enhance the performance and effectiveness of the IFI’s projects. The advisory function is an instrument to highlight needs for adjustment of policies and practices if recurrent non-compliance and related negative impacts are observed in the complaints processed.

139. During interviews conducted by the Review Team, it became evident that the advisory role laid out in the EIBG-CM Policy was not well understood and accepted within the EIBG Services. The EIBG-CM with its large case load would be well positioned to identify patterns and highlight recurrent systemic issues so that adjustments in policies and practices can be made. Some Board members interviewed by the Review Team emphasised that they would like the EIBG-CM to play a much more active role in providing lessons learnt based on complaints processed. They would also like to obtain analysis of systemic recurrent issues the EIBG-CM encounters as part of its compliance investigation and dispute resolution processes.

140. This review proposes a more consistent and visible advisory role for the EIBG-CM. For this purpose, the EIBG-CM should issue advisory notes to the Management Committee, and the Board

⁵⁴ See Advisory note: Observations resulting from case handling over several years, January 1, 2022.

⁵⁵ Ibid. pp.11-16.

⁵⁶ See for example CAO; Strengthening Greenhouse Gas Mitigation in IFC-Financed Projects, 30 October 2024; CAO, Responsible Exit: Insights from CAO Cases, December 2023; CAO, Insights from Remedy: The Remedy Gap. Lessons from CAO Compliance and Beyond, April 2023; CAO Insights on Remedy: The Role of Dispute Resolution in Remedy, February 2023, CAO Advisory Comments on IFC Draft Good PrCTIE Handbook on Land Acquisition and Involuntary Resettlement, May 2019; The World Bank Inspection Panel, Livelihoods – Lessons Learned and Considerations from Panel Cases, November 2023; World Bank Inspection Panel, Insights of the World Bank Inspection Panel: Responding to Gender-Based Violence Complaints Through an Independent Accountability Mechanism, May 2023; World Bank Inspection Panel, Land at the Center of Inclusive and Sustainable Development, May 2023; World Bank Inspection Panel, Insights from the Kalegala biodiversity offset associated with the Bujagali power project in Uganda, May 2023; African Development Bank IRM, Advisory Note on Preventing, mitigating, and responding to sexual exploitation, abuse and harassment (SEAH) within AfDB Operations, December 2022.

of Directors should be informed of the advice that the EIBG-CM provides. The EIBG-CM should make it a practice to issue advisory notes periodically (e.g. annually or semi-annually). Those notes could address specific issues as well as more general lessons learned from a period of EIBG-CM operations⁵⁷. EIBG-CM advisory notes intended for public distribution should be placed on the EIBG-CM website. This is in line with the practices established at other IAMs and in line with the role of the EIBG-CM as a public accountability mechanism.

141. The focus of advisory work is an important question. At other IAMs, it is good practice for the IAM to select topics that emerge as significant patterns from its cases, in consultation with the IFI's management, Board, and external stakeholders the primary audiences for its advice. These same stakeholders (the Services, MC, Board, and external stakeholders) should be the key audiences for lessons from the EIBG-CM's work. By building a body of well-documented and credible lessons with corresponding useful advice, the advisory function can become well-established and valued.

142. Most advisory notes should be uploaded on the EIBG-CM website, but some advice requested by the MC and/or the Board could be provided without public disclosure. The main reasons not to disclose advice publicly would be a) information was provided confidentially by complainants and/or promoters and cannot be disclosed and/or b) the value of confidentiality in enabling the institution to address the systemic issue(s) in question is more significant than the value of public disclosure of the information. Informal advisory services can be sought by the Management Committee or the Board.

143. As an independent accountability mechanism, the EIBG-CM should be the sole author of the advisory note. The EIBG-CM should seek consultations with the MC and the Services to obtain their views prior to issuing the advisory note and consider these views as an important input. However, consultation does not imply reaching agreement. The EIBG-CM as an independent accountability mechanism should be authorised to issue an advisory note even if Services and/or MC disagree with some of the expressed views, lessons and/or recommendations. This review is also of the view that the Board, as the oversight body of the EIBG, should be authorised to request advisory work from the EIBG-CM.

Recommendations: Advisory

74. Revise the Policy to make it explicit that:

- The MC and the Board may request advisory notes from the EIBG-CM, with the understanding that the EIBG-CM cannot provide advice on ongoing projects that are or may be the subject of complaints to the EIBG-CM, but can advise on lessons learned from EIBG-CM cases and implications for EIBG policy, procedures, and resourcing;
- The EIBG-CM may use its discretion to initiate advisory work on any issue that arises from its case experience, and which may be useful to the EIBG's Services, MC, and/or Board;
- The EIBG-CM will conduct its advisory work in consultation with the Services and Management Committee (and may respond to advisory requests from the Board), considering what advice and lessons will be most useful to them, while maintaining its independence in initiating and producing advisory work; and
- The EIBG-CM will issue advisory products periodically, addressing specific issues and key lessons learnt based on the complaints processed during the preceding period of operations.

75. Establish the norm of producing at least one publicly available EIBG-CM advisory work product each year.

⁵⁷ For example, the ADB Accountability Policy para. 212 provides for a learning report.

5. Cross-cutting issues

5.1. Resource constraints

144. The EIBG-CM is under-resourced to operate effectively. Considering its large case load, the EIBG-CM operates with significantly fewer staff than comparable IAMs. In comparison to other IAMs it has the lowest staff per case ratio (see Table 9). The differences with other IAMs are somewhat exaggerated as the number of active IAM complaints includes all complaints under monitoring, and the EIBG_CM conducts more limited monitoring than most other IAMs. Other IAMs consider a case active as long as they are under monitoring thus EIBG case under active monitoring have been added to total active EIBG cases in Table 9. However, even if actual differences in staff per case ratio shown might be slightly less significant, the staff-complaint ratio shown in figure 5 is so significantly different for the EIBG/EIBG-CM than in other IAMs, that it can be taken as a relevant indicator of the under-resourcing of the EIBG/EIBG-CM. The staff to case ratio for EIBG-CM amounts to 0.2. The next lowest IAM in terms of staff/case ratio is the EBRD/IPAM with a ratio of 0.44. The External Review conducted for EBRD/IPAM also highlighted the significant underfunding of the IPAM and called for a significant increase in resources⁵⁸. With the current resource envelope, the EIBG-CM cannot conduct its activities as required under its policy.

145. Insufficient EIBG-CM resources are reflected in:

- (i) The insufficient monitoring of agreed corrective actions (section 4.3.5 of this report);
- (ii) The lack of fact-finding consultation on draft Conclusions Reports with complainants and promoters;
- (iii) The timelines for processing compliance review complaints, which are significantly longer than stipulated in the EIBG-CM Policy. The policy provides for a maximum of 240 working days to process complaints under the extended procedure. The average actual time required amounts to 330 working days⁵⁹. Figure 5 compares policy prescribed timelines with actual timelines. The long processing time is not only linked to the resource constraints but also the result of very extensive consultation processes between the EIBG-CM and Services on draft Conclusions Reports. Long timelines undermine the trust and effectiveness of the EIBG-CM as a public accountability mechanism as long delays often make corrective actions for maladministration and related negative harm very difficult or impossible to achieve.
- (iv) The insufficient execution of the advisory function, despite its provision in the EIBG-CM Policy (see section 4.5).
- (v) The under-development of the dispute resolution function, despite its provision in the Policy and its good performance (see section 4.4).

⁵⁸ See Zeinab Elbakri, Assessment of the Independent Accountability Mechanism of the European Bank for Reconstruction and Development, May 2024, pages 18-20.

⁵⁹ For complaints received between 2020 and 2024. Time analysis before 2020 is not possible.

Table 9. Comparative cost, staffing and case load structure for different IAMs

	WB/AM	IFC/CAO	EIBG-CM	ADB/SPR-CRM	AfDB/IRM	EBRD/IPAM	IDB/MICI
Active cases	7	58	86 (includes 50 cases under monitoring)	7	16	16	18
Staff number	21	29	17	11	8	7	16
Staff per case	3	0.5	0.20	1.57	0.5	0.44	0.89

Source:

- For WB/AM, IFC/CAO, ADB/SPR-CRM, AfDB/IRM, EBRD/IPAM and IDB/MICI data on active cases and staff number: Zeinab Elbakri, *Assessment of the Independent Accountability Mechanism of the European Bank for Reconstruction and Development, May 2024, page 19. The data is from 2022.*
- For EIBG-CM, data provided by the EIBG-CM.

Note: A case is considered active by IAMs as long as monitoring of remedial actions are being carried out. In contrast, a case at the EIBG is considered closed once a completion report has been issued. Active cases at the EIBG therefore do not reflect any monitoring activities conducted by the EIBG-CM. The EIBG presently has 36 active cases and 50 cases under monitoring.

146. The large number of complaints to be handled with a very restrictive resource envelope is a significant shortcoming of the EIBG-CM. The review thus recommends a narrowing of the mandate and more restrictive admissibility criteria for the EIBG-CM to reduce the number of complaints to be admitted (see section 4.1). Reduced caseload would also be achieved by enabling the option to refer selected complaints back to the Services, when the EIBG-CM considers they can be solved within a defined timeline and when complainants agree to the process (see section 4.2.2). This review also recommends the introduction of a ‘filter function’, the initial compliance assessment, and to only process complaints to a full investigation where there is sufficient preliminary evidence of non-compliance and project-related negative impacts (see section 4.2.1). This filter function should reduce the number of complaints for which full compliance investigations need to be conducted. This review also proposes that the very extensive consultation process between the EIBG-CM and the Services on draft Conclusions Reports be discontinued. Such extensive processes absorb resources and undermine the independence and effectiveness of the EIBG-CM (see sections 4.3.3).

147. These recommended measures should free up resources which need to be used for other – presently not adequately performed – functions. As stated above, these are:

- (i) more substantive monitoring of follow-up actions with public disclosure of monitoring;
- (ii) fact finding consultations with complainants and promoters on draft Conclusions Reports;
- (iii) a significantly expanded dispute resolution function;
- (iv) advisory activities and products;
- (v) a more active external and internal outreach function in line with the EIBG-CM Policy commitments stated in para. 8.4. More internal outreach sessions are needed to raise awareness on the dispute resolution function and processes (see section 4.4.5).

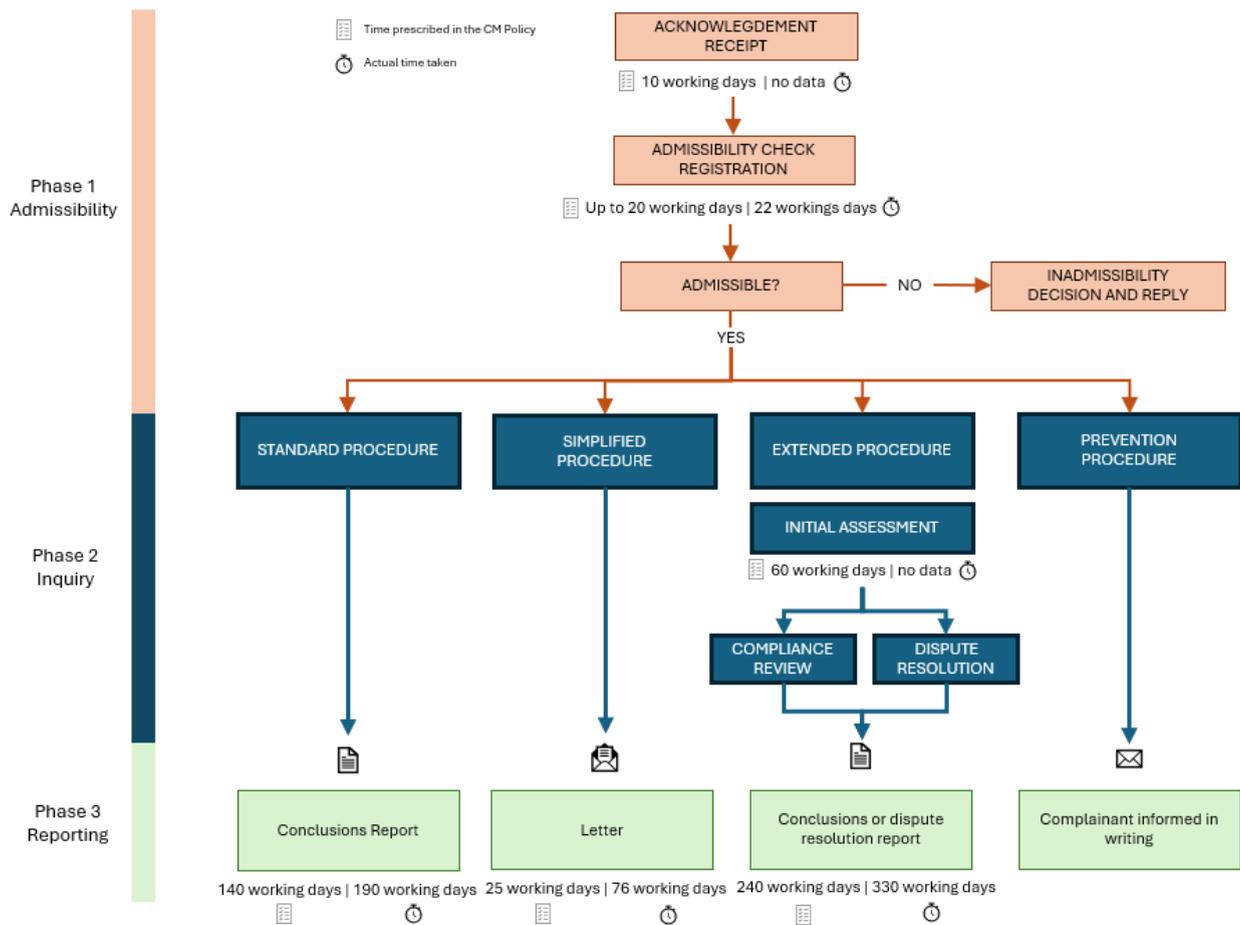
Table 10 below indicates which of the adjustments recommended in this review would require an increase and which would require a decrease in resources.

Table 10. Resource Implications for Recommended Adjustments

Proposed Adjustments	Some increase	Significant Increase	Some Reduction	Significant Reduction
Narrowing of mandate and scope – focus on project-related complaints on E&S non-compliance and related negative impacts			X	
Expand use of Dispute Resolution		X		
Introduce early resolution process which reduces somewhat numbers of complaints processed through DR or compliance investigation			X	
Conduct very limited assessment stage				X
Introduce an Initial Dispute Resolution Assessment		X		
Introduce an Initial Compliance Assessment		X		
Reduced the number of Compliance Assessments as only complaints with preliminary evidence of non-compliance and related negative impacts proceed to a full investigation			X	
Reduce consultation time with Services and Initial Assessment, Conclusions Report and Recommendations				X
Introduce MAPs		X		
Conduct substantive monitoring of agreed MAPs		X		
Conduct Advisory Services	X			
Expand Outreach Activities	X			

148. This Review argues that the EIBG-CM does require with the next budget cycle a modest increase in resources. As the full resource implications of the proposed reconfigurations should not be prejudged, the actual resource needs would need to be reviewed after the reconfiguration occurs.

Figure 5. Official timelines and actual timelines



Source: EIBG-CM Policy for prescribed timeline / internal EIBG-CM registry for actual time taken

Note: Actual time taken only considers complaints submitted between 2020 and 2024, excluding, EO cases, ongoing cases and cases where data is missing. Standard and extended procedures do not necessarily end with a Conclusions or DR report. The closure date was considered instead.

5.2. Outreach and awareness building

149. Outreach refers to the set of policies, strategies and actions implemented by the EIBG to raise awareness about the existence, purpose and functions of its complaints mechanism, ensuring that affected populations in project areas understand how to access this mechanism and assert their rights. The outreach efforts of the EIBG-CM are part of the EIBG Complaints Mechanism Policy (2021) and are integrated in the EIBG’s Environmental and Social Standards (ESS, 2022), and the Environmental and Social Handbook (2013).

150. The EIBG-CM publishes annual reports on its case-handling activities and ensures that its procedures are available to the public. Paragraph 8 of the EIBG Complaints Mechanism Policy (2018) specifies that the EIBG-CM must undertake awareness-raising activities and publish information to inform stakeholders about their right to lodge complaints. Moreover, outreach integrates in the EIBG Environmental and Social Standards which mandate project promoters to implement a transparent and continuous engagement with project stakeholders and disclose

information about grievance mechanisms, including the EIBG-CM⁶⁰. Detailed stakeholder engagement plans must ensure that communities are fully informed about their rights. Promoters are required to disclose information on the EIBG-CM in a timely and accessible manner⁶¹. In addition to the public consultation conducted by EIBG to review its policy framework in 2017, the EIBG-CM has organised in recent years internal and external communication and outreach events favouring internally training of operational departments and external offices (even if does not appear to be mandatory) and externally information sessions with CSOs about its mandate admissibility criteria and methodological approach⁶². It has also undertaken awareness raising activities and publications to inform local communities about their right to lodge complaints⁶³. Finally, it maintains a comprehensive website offering information on the pending, completed and closed cases, how to submit complaints, frequently asked questions and detailed explanations of its procedures⁶⁴.

151. Despite these strengths, several CSOs have highlighted gaps in the EIBG-CM outreach approach. In “Holding the EIBG and EBRD Accountable” (2024), Bankwatch criticised the EIBG-CM outreach activities for being too broad in scope and not tailored to specific projects and for lacking proactive measures to inform project-impacted stakeholders about the existence of EIBG-CM⁶⁵. It noted that reliance on project promoters for outreach often leads to inconsistent and inadequate dissemination of information, and that the EIBG never reports on how project promoters inform stakeholders of the existence of EIBG-CM⁶⁶.

152. Moreover, the EIBG has so far not formalised an outreach strategy⁶⁷ which establishes the priorities to be developed in the EIBG-CM work programme and how they can then be evaluated. Such a strategy should provide a structure to the activities already implemented and should develop areas which may require further reinforcement, e.g.: level, frequency and quality of mandatory training provided to staff including newcomers or key teams; role to play in proactively reaching out

⁶⁰ EIB Environmental and Social Standards (2022), Standard 10 “Stakeholder Engagement”. This standard recognises the importance of stakeholder engagement to ensure access to information, public participation and access to justice. It mentions among its objectives “Providing stakeholders with effective means to raise grievance and access remedies and promoting organisational accountability and continuous learning and improvement”. The promoter shall made available to the public [...] the available project-level grievance or feedback mechanism, the EIB Group Complaints Mechanism and how stakeholders can access them”. See also points 21 to 25. The projects with significant E&S impact and risks require a Stakeholder Engagement Plan (SEP) to be prepared by the promoter (see points 26 to 32). This SEP should include a grievance mechanism.

⁶¹ EIB loan agreements include provisions that require borrowers and promoters to ensure the respect of European Investment Bank, Environmental and Social Standards and Handbook.

⁶² EIB-CM organised internal training sessions in 2022 and 2023 addressed to both operational officers and officials in external offices.

⁶³ EIB-CM organised events with global and regional CSOs in 2022, 2023 and 2024 with a clear focus on countries outside the EU.

⁶⁴ For a comprehensive approach on Outreach of Independent Accountability Mechanism see Good Policy Paper recommendations 17 to 27 (January 2024) collaboratively authored by a number of CSOs.

⁶⁵ CEE Bankwatch Network, Holding the EIB and EBRD Accountable, 2024, p. 13 and 14. Additionally, Bankwatch recommends that a mandatory section of the relevant project summary should specify how and where information about the EIB-CM has been communicated to project stakeholders.

⁶⁶ EIBG-CM is authorised to conduct site visits as part of its complaint assessment and investigation processes by section 2.4.5 of its Procedures. The Procedures do not explicitly mention proactive visits, but EIBG-CM does engage in visits and in-person meeting as part of its outreach activities.

⁶⁷ See for all EBRD Outreach Strategy 2021-2024. See also Good Policy paper recommendation 20.

to affected populations; differentiated outreach for vulnerable people⁶⁸; and consistent implementation across projects and regions. Each annual outreach programme should be part of the budget proposal for the EIBG-CM.

Recommendations: Outreach and awareness building

76. The EIBG-CM should develop a public outreach strategy providing a structure to the activities already implemented and developing areas which may require further reinforcement e.g.: level, frequency and quality of mandatory training provided to staff including newcomers or key teams; role to play in proactively reaching out to affected populations; differentiated outreach for vulnerable people⁶⁹; and consistent implementation across projects and regions.

⁶⁸ EIBG Environmental and Social Standards (2022), Standard 10 Stakeholder Engagement, requires the promoter to run meaningful consultation that includes tailored measures to empower affected individuals and communities, in particular those who are vulnerable, marginalised, and/or discriminated against.”

⁶⁹ EIBG Environmental and Social Standards (2022), Standard 10 Stakeholder Engagement, requires the promoter to run meaningful consultation that includes tailored measures to empower affected individuals and communities, in particular those who are vulnerable, marginalised, and/or discriminated against.”

Annex 1. Terms of Reference

EXTERNAL REVIEW EIBG Group Complaints Mechanism

Terms of Reference

1. Background

1.1 The EIBG Group

The European Investment Bank Group consists of the European Investment Bank (“EIBG”) and the European Investment Fund (“EIF”).

The EIBG is the financing institution of the European Union (“EU”). Created by the Treaty of Rome, its shareholders are the EU Member States and its Board of Governors is composed of the Finance Ministers of these States. The EIBG enjoys its own legal personality and financial autonomy within the EU system. The EIBG’s mission is to contribute to the policy objectives of the EU by financing sound investments across the EU. The EIBG raises substantial volumes of funds on the capital markets and directs them under favourable terms towards financing capital projects in line with the objectives of the EU. Through EIBG Global, set up in 2022 to increase the impact of EIBG’s development finance, the EIBG helps address global challenges and create growth and opportunity in all continents.

For more information about the EIBG, please visit: www.EIBG.org.

The EIF’s main mission is to support Europe’s small and medium enterprises to access finance. It offers innovative financial products to intermediaries such as banks, micro-credit providers and private equity funds. The EIBG is the majority EIF shareholder, with the remaining equity held by the EU and other European private and public bodies.

For more information about the EIF, please visit: www.eif.org.

1.2 The EIBG Group Complaints Mechanism

The EIBG Group Complaints Mechanism (“EIBG-CM”) is a public accountability tool, within the institutional context of the European Union. It enables the alternative and pre-emptive resolution of disputes between the public and the EIBG Group. To ensure that external stakeholders (including people affected by EIBG Group operations) have access to appropriate forum where to voice their concerns, the EIBG-CM handles complaints regarding maladministration lodged directly with the EIBG Group in line with the EIBG- EIF- EIBG-CM Policy (<https://www.EIBG.org/en/publications/complaints-mechanism-policy>) and Procedures (<https://www.EIBG.org/en/publications/complaints-mechanism-procedures>) in force since November 2018.

Maladministration means poor or failed administration. This occurs when the EIBG Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures. Maladministration may also relate to the environmental or social impacts of the EIBG Group activities.

The EIBG-CM is independent from operational activities. Administered by the Complaints Mechanism Division (IG/EIBG-CM) within the Inspectorate General (IG), the EIBG-CM ensures that each complaint is dealt with by the highest standards of objectiveness whilst safeguarding the interest of all the internal and external stakeholders of the EIBG Group. The Head of IG/EIBG-CM is, under the auspices of the independent Inspector General, responsible for the development, implementation and monitoring of the EIBG-CM.

When handling admissible complaints, the EIBG-CM serves the following functions:

- Assess occurrence(s) of maladministration and report for each admissible complaint about compliance with the applicable regulatory framework (*compliance review function*);
- Attempt to resolve concerns raised by the complainant through a consensual process (*dispute resolution function*); and
- Follow-up and report on the EIBG Group's efforts to take corrective actions recommended/suggested by the EIBG-CM (*monitoring function*).

Moreover, the EIBG-CM assists the EIBG Group, for the common sake of good administration, by contributing to the identification of possible improvements to the implementation of the EIBG Group's activities (*advisory function*).

Under the current set-up made of the EIBG Group Complaints Mechanism Policy and the 2008 Memorandum of Understanding between the European Ombudsman (EO) and the EIBG, when exercising the right to lodge a complaint against the EIBG Group, any member of the public has access to a two-tier procedure, one internal – with the EIBG-CM – and one external – with the EO. Complainants who are not satisfied with the outcome of the procedure before the EIBG-CM or with the EIBG Group's response can file a complaint of maladministration against the EIBG Group with the EO.¹

IG coordinates the EIBG Group's relevant teams (or "services") in the preparation of the EIBG Group's response to complaints lodged against the EIBG Group with the European Ombudsman or any other non-judicial review mechanisms which (directly or indirectly) concern the EIBG Group.

The EIBG-CM Policy stipulates that, at least every five years, the EIBG-CM will consider the need to launch a review of the Policy, including consultation with EIBG Group stakeholders.

For more information about the EIBG-CM, please visit: www.EIBG.org/complaints.

The EIBG-CM is a member of the Independent Accountability Mechanisms (IAMs) network.²

2. External Review Assignment

The Inspector General is commissioning this External Review ("Review") to assess (i) to what extent the activities of the EIBG-CM are ensuring the fulfilment of its mandate in accordance with the EIBG-CM Policy and Procedures, as well as international standards and best practices³ and (ii) whether a review of the 2018 EIBG-CM Policy and Procedures is necessary. The findings of the Review will be presented to the EIBG Management Committee / EIF Chief Executive and to the EIBG / EIF Boards of Directors.⁴

Objectives

The overall objectives of the Review are as follows:

- (i) To assess the EIBG-CM's functioning and structure, against its own Policies & Procedures;
- (ii) To assess whether its structure, Policies and Procedures are adequate for the effective implementation of its role and how these compare to international best practice;
- (iii) Based on (i) and (ii), it should identify strengths and provide recommendations for improvements to the activities of the EIBG-CM, and the way it operates, in the context of the potential launch of a review of the EIBG-CM Policy and Procedures in 2024.

The Review is expected to cover all four current EIBG-CM functions:

1. EIBG-CM compliance review function and its capacity in providing independent accountability and identifying actions to address maladministration;
2. EIBG-CM dispute resolution function and its capacity in resolving disputes in an independent and collaborative manner;

¹ The EO is an external and fully independent non-judicial review mechanism that was established in 1992 to deal with complaints about alleged maladministration by the EU institutions and bodies. The exhaustion of the internal complaints mechanism procedure is a necessary requisite for any complaint to be entitled to escalate to the EO. A possible change to the current set-up would need to be taken into account in the external review.

² <https://www.worldbank.org/en/programs/accountability/iamnet>

³ Including those of other Independent Accountability Mechanisms (IAMs).

⁴ In line with Article 9.3 of the EIBG-CM policy, the Policy is approved by the EIBG and the EIF Board of Directors upon proposal by the EIBG Management Committee and the EIF Chief Executive/Deputy Chief Executive (CE/DCE). When necessary, the EIBG

Management Committee and the EIF CE/DCE may amend the EIBG Group Complaints Mechanism Procedures based on a proposal from the EIBG-CM, in consultation with the EIBG Group services and following consultation with the EO whilst ensuring that the modification is consistent with the provisions of the Policy.

- implementation of recommendations/suggestions for improvement;
4. EIBG-CM advisory function in providing the EIBG's management including EIBG Governing Bodies with an independent avenue of counsel.

The external review panel (hereinafter the 'Review Panel') shall be composed of:

- 2 experts with no affiliation to the EIBGG and with high degree of expertise and demonstrated experience in accountability of International Financial Institutions: compliance, dispute resolution, monitoring, and advisory role; and
- 1 expert with deep knowledge of the EIBG Group, including its institutional and legal set-up and the functioning of independent functions.

The Review Panel reports to the Inspector General.

The Review Panel will be assisted by an experienced consultant who will support the experts' work, including in the preparation of the report.

2.1 Detailed description of the Assignment

Scope

The Review will cover, but will not be limited to, an assessment of the EIBG-CM work and more specifically:

- **EIBG-CM Policy and Procedures:** role, responsibility and objectives of IG/EIBG-CM; clarity of the Policy/Procedures; adequate coverage of EIBG-CM's functions
- **Impartiality, transparency/confidentiality and independence;**
- **Resources** (including the use of consultants) **and staffing;**
- **Efficiency of complaints-handling processes** (admissibility assessment/decision; allocation of cases; initial assessment; compliance review; dispute resolution; file documentation; reporting; consultation processes);
- **Accessibility of the EIBG-CM** for the public in general and affected people (are the Policy/Procedures sufficiently clear? Are outreach efforts adequate to ensure access to the EIBG-EIBG-CM? Does the EIBG-CM website provide adequate information on the EIBG-CM? Are eligibility criteria too strict/broad? How easy is it to submit a complaint? What protection is in place for individuals at risk of retaliation?);
- **Efficiency of EIBG-CM's monitoring processes;**
- **Efficiency of EIBG-CM's quality assurance processes**
- **Adequacy and quality of existing reporting lines to the EIBG Group Governing Bodies** (EIBG Management Committee / EIF Chief Executive and EIBG / EIF Boards of Directors);
- **Dissemination, feedback, knowledge management and learning** (how does the EIBG-CM contribute to the institutional learning of the EIBG, how are lessons from the EIBG-CM taken up by the organization, how are EIBG-CM recommendations implemented);
- **Collaboration with internal stakeholders and teams ("Services");**
- **Cooperation with external stakeholders** including: (i) NGOs and project-affected people which have previously accessed the EIBG-CM, (ii) EU institutions/bodies such as the European Ombudsman and (iii) other key external stakeholders such as other IAMs and EIBG clients.

The Review should identify the EIBG-CM's strengths as well as areas where improvements might be necessary, in such case indicating whether and how such improvements could be introduced. Where appropriate and keeping in mind the institutional context in which the EIBG Group operates⁵, the Review should include comparisons with practices of other IFIs.

Methodology and activities

The activities will include, but will not be limited to:

⁵ In particular, the status of the EIBG Group's entities as EU bodies and the two-tier structure of the EIBG Group Complaints Mechanism (with an external and fully independent second tier of redress provided by the European Ombudsman) which is based on the concept of maladministration.

- Desktop review of policies, procedures, activity reporting, publications of EIBG-CM reports on individual cases, as well as other relevant EIBG-CM (internal) documents.
- Interviews with EIBG-CM staff and relevant internal stakeholders and counterparts.
- Peer comparison in view of international best practice
- Interviews with external stakeholders

All activities shall be performed in close consultation with the Inspector General and the Head of IG/EIBG-CM. The Review Panel will deliver the draft Report in April 2024, by a specific date to be agreed and specified in the inception report, for discussion of the outcome and key issues with the Inspector General and the Head of IG/EIBG-CM.

The final Report will be submitted in July 2024, by a specific date to be agreed and specified in the inception report, and will then be presented to the Management Committee and EIF Chief Executive, and subsequently to the EIBG and EIF Boards of Directors.

Deliverables and reporting requirements

The assignment is expected to yield at least the following deliverables:

Table 1 – Deliverables and reporting requirements

NB: the exact timeline will be confirmed in the inception report and also depend on the EIBGG Governing bodies planning.

	Task	Deliverable	Timeline
A	Desk research Conceptual approach Planning	Inception report, including work programme and detailed planning	February 2024
B	Interviews in (i) Luxembourg ⁶ , and (ii) Brussels ⁷ if needed	Interviews minutes	March 2024
C	Analysis Prepare draft report	First draft report	End April
D	Revise first draft report taking into account IG and the Head of IG/EIBG-CM's comments	Revised draft report	May/June 2024
E	Prepare final report taking into account IG and Head of IG/EIBG-CM comments	Final report	July 2024
F	End-of-assignment	Presentation of the Final report to (i) EIBG MC /EIF CE and (ii) EIBG/EIF Boards of directors	(i) September 2024 (ii) October 2024

Timeline

The Review is expected to be conducted between February 2024 and October 2024.

The Review Panel members are expected to work a maximum of 25 working days each (with the possibility of some additional days for the Chair).

The consultant is expected to work a maximum of 25 working days.

Amendments to the assignment

The Inspector General might request amendments of the work plan, if these are considered useful for the purpose of this assignment and feasible within the defined time (and budget).

⁶ Meetings with IG/EIBG-CM staff, other EIBG staff/management, EIBG President and relevant Vice-Presidents.

⁷ Meeting with NGOs, EU Ombudsman and staff, the EIBG office in Brussels, members of the European Parliament that follow

3. Organisation of the assignment

3.1 The Review Panel

Three independent experts will be selected and form the Review Panel. The selected Review Panel is expected to function as a team in all aspects of its work. The Review Panel members will decide amongst themselves who will serve as the Chair of the Review and, as such, will coordinate the assignment.

The three independent experts will have a high degree of expertise and experience with the specific work of the Accountability Mechanisms of (other) Multilateral Financial Institutions. The Review Panel shall consist of:

- One expert with demonstrated experience in Compliance Review with no affiliation to the EIBG
G
- One expert with demonstrated experience in Dispute Resolution with no affiliation to the EIBG
G
- One expert with demonstrated experience in the functioning of the EIBG including its control and accountability functions.

The Review Panel will be supported by a consultant, in particular to mobilise the necessary data and documents for the desk review, and generally be the point of contact for all administrative and logistics with EIBG (including for the scheduling of the interviews with internal and external stakeholders). The consultant will support the experts in the preparation of the draft consolidated reports (first draft and revised draft) and the final report.

Further information on the selection requirements is provided in Section 4.

3.2 Administrative Provisions

Fees

The Review Panel will receive a daily fee. Traveling expenses to and from Luxembourg and from Luxembourg to/from Brussels are reimbursed in line with applicable Bank's travel policies.

Organisational support

The Review Panel and the consultant will be supported by IG/EIBG-CM and the Inspector General in order to plan, organize and execute their work.

Location

The kick-off meeting will take place at the EIBG Luxembourg headquarters or be held virtually; the Review Panel will meet with IG/EIBG-CM staff and relevant internal stakeholders in the EIBG.

Further missions to Luxembourg may be required, in order to complete the interviews of internal/external stakeholders. Meetings can also be organised via video-conferencing.

The Review Panel will need to consult with the European Ombudsman and/or the Director of Inquiries of the European Ombudsman, representatives of NGOs, member(s) of the European Parliament that follow closely the work of the EIBG-CM. A mission to Brussels for face-to-face meetings will be considered if needed.

The Review Panel will determine the information and data they need in order to fulfil their task.

Study work and report drafting will take place at the Review Panel members' and the consultant's own premises.

The Review Panel and the consultant should be available to exchange with IG/EIBG-CM during the Bank's working days and working hours.

Facilities to be provided by the Review Panel members

The Review Panel members should provide all computing and office back-up for work in the home office, and on mission. The EIBG will provide use of a room and appropriate IT access for the missions to Luxembourg.

EIBG General Terms & Conditions

Contracts for the provision of services, using the Bank's standard model, will be signed by the Bank with individual Review Panel members and with the consultant.

The Review Panel members shall undertake to comply at all times with the Bank's General Terms and Conditions for Contracts for the Provision of Services.

The Review Panel members will be subject to the confidentiality rules of the EIBG and will have to sign a statement to this effect.

Jurisdiction

Contracts shall be governed by the laws of Luxembourg and the parties will submit to the exclusive jurisdiction of the Tribunal d'arrondissement of Luxembourg.

4. Required skills qualifications and competencies

Expert 1: Compliance Review

The EIBG seeks an experienced individual who has at least 15 years' experience with International Finance Institutions (IFIs) relating to governance and oversight issues including experience regarding independent accountability mechanisms.

The task requires proven ability to interpret and apply IFIs policies and standards; knowledge and practice of investigative strategies, methodologies and techniques; and demonstrated knowledge of economic, social and sustainable development, also in developing countries.

The individual must have demonstrated integrity, excellent interpersonal skills, exposure to an international and multicultural environment, and the ability to travel on short notice frequently.

The successful candidate is expected to have:

- **Education:** Relevant advanced degree (Master's degree equivalent, or higher), or equivalent professional experience, in a relevant discipline (e.g. accountability, environmental, social, economic, engineering, legal and/or private sector fields related to international development).
- **Experience:**
 - Minimum of 5 years of continued working experience in the compliance review function of the International Financial Institutions (IFIs) accountability mechanisms or similar,
 - Proven ability to interpret and apply IFIs policies and standards and knowledge of investigative strategies, methodologies and techniques.
 - Demonstrated knowledge of economic, social and sustainable development. At least 15+ years of experience and demonstrated competence in the relevant disciplines are required.
 - Demonstrated integrity.
 - Knowledge of and experience with the operations of multilateral development organisations and/or private sector experience in developing countries are also valuable.
 - Proven strong ability gathering, analysing and synthesizing information from multiple sources and presenting it in a concise and clear manner.

- - Independence from Operations departments and Management of the EIBG Group.
 - Good exposure to international and multicultural environment.
- **Languages:** Excellent command of English. French and other EU languages will be an asset.
- **Competencies:**
- Technical expertise: knowledge and experience in investigative strategies, methodologies, and techniques; ability to manage a thorough and systematic complaints-handling process.
 - Analysis and Problem-Solving: ability to make critical decisions based on systematic analysis and sound judgment.
 - Negotiation Skills: ability to acknowledge and manage conflicts in a timely and constructive manner, working through resistance and objections by providing proposals and negotiating compromises that take into account the key needs of all parties.
 - Strategic Thinking/Drive for Results: proven ability to formulate objectives, set priorities, identify and optimize the use of resources, and implement plans consistent with the long-term interest of the institution in a global environment.
 - Communication and Knowledge-Sharing: excellent interpersonal skills; well-developed writing and editing skills; advanced presentation skills sufficient to convey complex information on issues requiring specific fact-based reporting to diverse and non-specialised audiences including EIBG Group governing bodies and Senior Management.
 - Ability and willingness to travel on reasonably short notice.

Expert 2: Dispute Resolution

The EIBG seeks an experienced individual who has at least 15 years' experience with dispute resolution in the context of development finance, including disputes handled by independent accountability mechanisms.

The task requires proven ability to interpret and apply IFIs policies and standards; knowledge and practice of dispute resolution strategies, methodologies and techniques; and demonstrated knowledge of economic, social and sustainable development, also in developing countries.

The individual must have demonstrated integrity, excellent interpersonal skills, exposure to an international and multicultural environment, and the ability to travel on short notice frequently.

The successful candidate is expected to have:

- **Education:** Relevant advanced degree (Master's degree equivalent, or higher), or equivalent professional experience, in a relevant discipline (e.g. dispute or conflict resolution, law, accountability, environmental, social, economic, engineering, private sector fields related to international development).
- **Experience:**
 - Strong background in dispute resolution in the context of development finance
 - Experience with accountability mechanisms of IFIs,
 - Demonstrated knowledge of disputes regarding adverse social and environmental impacts of projects, including resettlement-related cases.
 - Proven ability to carry out dispute resolution processes in line with policies and procedures of accountability mechanisms.
 - Demonstrated knowledge of economic, social and sustainable development.
 - Demonstrated integrity.
 - Knowledge of and experience with the operations of multilateral development organisations and/or private sector experience in developing countries are also valuable.
 - Proven strong ability gathering, analysing and synthesizing information from multiple sources and presenting it in a concise and clear manner.

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- Independence from operations departments and Management of the EIBG Group.
- Good exposure to international and multicultural environment.
- **Languages:** Excellent command of English. French and other EU languages will be an asset.
- **Competencies:**
 - Technical expertise: knowledge and experience in dispute resolution strategies, methodologies, and techniques.
 - Analysis and Problem-Solving: ability to make critical decisions based on systematic analysis and sound judgment.
 - Negotiation Skills: ability to acknowledge and manage conflicts in a timely and constructive manner, working through resistance and objections by providing proposals and negotiating compromises that take into account the key needs of all parties.
 - Strategic Thinking/Drive for Results: proven ability to formulate objectives, set priorities, identify and optimize the use of resources, and implement plans consistent with the long-term interest of the institution in a global environment.
 - Communication and Knowledge-Sharing: excellent interpersonal skills; well-developed writing and editing skills; advanced presentation skills sufficient to convey complex information on issues requiring specific fact-based reporting to diverse and non-specialised audiences including EIBG Group governing bodies and Senior Management.
 - Ability and willingness to travel on reasonably short notice.

Expert 3: EIBG Group roles, and processes

The EIBG seeks an experienced individual who has at least 15 years' experience with excellent knowledge of the functioning of the EIBG, the set-up of its accountability functions and the project cycle.

The task requires proven knowledge and practice of the EIBG Group's policies and standards;

The individual must have demonstrated integrity, excellent interpersonal skills, exposure to an international and multicultural environment, and the ability to travel on short notice frequently.

The successful candidate is expected to have:

- **Education:** Relevant advanced degree (Master's degree equivalent, or higher), or equivalent professional experience, in a relevant discipline (e.g. accountability, environmental, social, economic, engineering, legal and/or private sector fields related to international development).
- **Experience:**
 - Minimum of 10 years of continued working experience in an EU institution/body.
 - Proven ability to interpret and apply EU and EIBG policies and standards.
 - Demonstrated integrity.
 - Proven strong ability gathering, analysing and synthesizing information from multiple sources and presenting it in a concise and clear manner.
 - Highly developed communication and diplomatic skills, including the ability to engage effectively with internal and external stakeholders including at top management level.
 - Independence from operations departments and Management of the EIBG Group.
 - Good exposure to international and multicultural environment, including multilateral development organisations.
- **Languages:** Excellent command of English. French and other EU languages will be an asset.
- **Competencies:**

-
- Analysis and Problem-Solving: ability to make critical decisions based on systematic analysis and sound judgment.

- compromises that take into account the key needs of all parties.
- Strategic Thinking/Drive for Results: proven ability to formulate objectives, set priorities, identify and optimize the use of resources, and implement plans consistent with the long-term interest of the institution in a global environment.
- Communication and Knowledge-Sharing: excellent interpersonal skills; well-developed writing and editing skills; advanced presentation skills sufficient to convey complex information on issues requiring specific fact-based reporting to diverse and non-specialised audiences including EIBG Group governing bodies and Senior Management.
- Ability and willingness to travel on reasonably short notice.

Consultant

The EIBG seeks a consultant who has at least 10 years relevant experience with a strong specialisation in Environmental & Social matters in IFIs-financed projects, and EIBG E&S standards and policies. The consultant must have excellent coordination and English writing skills. Knowledge and practical experience with complaints handling and accountability in the European context will be an asset.

Annex 2. Interviews and case studies

Management Committee

- Nadia Calviño, President
- Ambroise Fayolle, Vice-President
- Robert De Groot, Vice-President
- Gelsomina Vigliotti, Vice-President
- Teresa Czerwińska, Vice-President
- Nicola Beer, Vice-President

Board of Directors

- Anna Björnermark, Swedish Board member
- Julie Sonne, Danish Board member
- Karin Rysavy, Austrian Board member
- Susanne Blomenhofer, German Board member
- Elena Flores, European Commission Board member

Inspectorate General

- Monique Koning, Inspector General
- Jan Willem van der Kaaij, Former Inspector General
- Sonja Derkum, Former Head of EIBG-CM Division
- Vasco Amaral Cunha, Head of EIBG-CM Division
- Omar El Sabee Larranaga, Head of Case handling and Admissibility unit
- Laurence Levaque, Head of Complaints Handling and Reporting Unit
- Philip Koenig, Head of Dispute Resolution Unit
- Damir Petrovic, EIBG-CM officer
- Felismino Alcarpe, Former Head of EIBG-CM Division

General Secretariat

- Barbara Balke, Secretary General
- Mikolaj Dowgielewicz, Deputy Secretary General
- Luis Garrido, Head of Secretary General's Office

Portfolio Management and Monitoring Directorate

- Luca Lazzaroli, Director General
- Lourdes Castellanos, Head of Division - Financial institutions and Public Sector Non-EU

Projects Directorate

- Laura Piovesan, Director General and Deputy Head
- Ann-Louise Aktiv Vimont, Head of Coordination, Accountability and Procedures
- Christian Barbu, engineer

Global Directorate

- Markus Berndt
- Lionel Rapaille

Operations Directorate

- Elina Roine, Director of Operations Support
- Laurent Colvez, former loan officer

Legal Directorate

- Emer Falvey, Director of JU/CORP Department

European Investment Fund

- Elizabeth Murphy Dunn, Chief Compliance Officer

European Ombudsman

- Rosita Hickey, Director of Inquiries
- Jennifer King, Legal expert

Civil society

- Margaux Day, Executive Director of Accountability Counsel
- Frank Vanaerschot, Director of Counter Balance
- Anna Roggenbuck, EIBG policy officer at Bankwatch

Interviews related to case studies

- Felix Nyirenda, resident and dispute resolution process participant, Mzuzu, Malawi
- Catherine Mwafulirwa, Director of Infrastructure Development, Northern Region Water Board, Mzuzu, Malawi
- Mwawi Tati Kumwenda, Infrastructure Development Manager, Northern Region Water Board, Mzuzu, Malawi
- Karanja Njoroge, facilitator, Mzuzu dispute resolution process, Kenya
- Margaret Sikwese, facilitator, Mzuzu dispute resolution process, Malawi
- Somnathji, fruit vendor and dispute resolution process participant, Pune, India
- Vikrant Raje, dispute resolution process interpreter, Pune, India
- Atul Gadgil, Director (Works), Maha-Metro, Pune, India
- Aparna Mukerjee, facilitator, Pune fruit vendor dispute resolution process
- Sutharee Wannasari, Accountabiliy Counsel, Bangalore Metro Rail Project
- Ebenezer Premkumar, Bangalore LG Project, Durca Mani Rai, Nepal Marsyangdi Transmission Lines
- Shankar Limbu, Nepal Marsyangdi Transmission Lines
- Malaika Sacranie, SRWB Water Supply and Sanitation Programme, Malawi
- Hafedh Kotti, S2 Denivellation de huit carrefour at Sfax, Tunisia
- Dr. Joze Duhovnik, Divaca-Kopper Rail Track, Slovenia

Annex 3. List of Recommendations

Mandate and scope

1. Redefine the mandate of EIBG-CM to:
 - facilitate access to remedy to address negative impacts;
 - assess compliance with project-related policies and procedures, primarily environmental and social policies, as well as project-related information disclosure;
 - provide for an institutional source of learning to avoid recurrence of non-compliance and related negative impacts;
 - support improvements in the development impact of lending; and
 - foster public accountability.
2. Transfer complaint handling responsibilities for non-project related complaints to other EIBG units.

Governance

3. Consider ways to raise the stature of the EIBG-CM within the EIBG's governance structure.
4. Raise the visibility of the EIBG-CM as an important accountability function on the EIBG website, and in internal and external communications by the Board, Management Committee, and the DGs of the Services.
5. Revise the EIBG-CM Policy to:
 - Introduce conflict of interest guidelines on the hiring or subsequent employment or engagement of the Head of the EIBG-CM within the EIBG.
 - Make it explicit that the MC has the responsibility to ensure that the Services respond to EIBG-CM non-compliance findings and recommendations by proposing remedial action, unless they fundamentally disagree with the findings and/or recommendations.
 - Make it explicit that the MC has the responsibility to resolve disagreements between the Services and the EIBG-CM. (This responsibility is currently specified in the EIBG-CM Procedures (para.1.8.2) but not in the Policy).
 - Require the Services to produce a Management Action Plan in response to EIBG-CM non-compliance findings and recommendations and require the MC either to endorse the proposed actions or direct the Services to take additional steps to address non-compliance (see sections 4.3.3 and 4.3.4 for a detailed explanation of this recommendation).
6. Require the Board to be regularly informed of
 - particularly significant complaints and non-compliance findings;
 - disagreements between the EIBG-CM and the Services on non-compliance findings and recommendations, and on the resolution of those disagreements by the MC; and
 - systemic recurrent issues emerging as part of the EIBG-CM investigations.
7. To increase the Advisory function's value to the EIBG, revise the EIBG-CM Policy to:
 - Require the EIBG-CM's Advisory function to report periodically to the Board, produce lessons learned reports and provide advice to the Board on request.
 - Issue periodic public advisory notes (perhaps starting with one per year) on a particular systemic issue that has been identified by the EIBG-CM, and

- Make it explicit that the MC and the Board may ask the Advisory function for advice on specific issues related to the EIBG-CM's mandate and experience with project-related complaints (see section 4.5 for details).

Identity of complainants and content of complaints

8. For a complaint to be admissible, the complainant needs to allege a present or likely future negative impact associated with an EIB-supported project. The complaint may or may not allege non-compliance with EIB policies and standards.
9. The mandate of the EIBG-CM should be for project-related complaints and related policies. Project-related policies include the (i) policies and standards; (ii) procedures related to the policy and/or standards, and (iii) related guidance notes and instructions.
10. Complainants can choose to be represented by local, regional or international representatives (individuals and/or organisations) but need to provide an authorisation for representation.
11. Non-governmental organisations pursuing matters of environmental concerns should be allowed to submit complaints on EIBG projects/investments where environmental impacts are local, regional or global reaching beyond the narrow confines of the location, region or country where the project is located.

Timeframe for filing complaints

12. Replace the present timeline where a complaint can be filed up to one year after the complainant gaining knowledge or after the complainant could have reasonably known with a fixed time of 24 months after project closure.
13. A revised EIBG-CM policy needs to define the project point which should be considered the closure point for an admissibility process for different equity/lending operations.

Prevention procedure

14. The admissibility of complaints regarding projects not yet approved for financing should be maintained and such complaints should be followed up by EIBG Services. If the Services have not resolved issues raised under the complaint within the agreed time period to the satisfaction of the complainant, then the EIBG-CM should be authorised to proceed with the complaint under its regular processes. In exceptional cases, an extension to six months is possible.
15. In all cases, EIBG management should inform the Management Committee and the Board about the complaint at the time when project documents are presented for financing approval. The EIBG-CM should be asked to provide its assessment on actions taken by the Services in response to the complaint.

Judicial clause

16. The judicial clause needs to be clarified to specify that the exclusion only relates to complaints filed against the EIBG with EU institutions. It is not a general judicial clause excluding any complaints for which judicial proceedings are pending.

Self-initiated complaints

17. Self-initiated complaints as outlined in present policy should be maintained and used.
18. Introduce into a revised EIBG-CM Policy the provision that the Board has the right to initiate complaints.

Complainants' preferences

19. Make it explicit in the Policy that complainants have the option to request dispute resolution or a compliance process and that their preference (following initial discussion with the EIBG-CM to ensure informed choice) will be the primary factor determining whether the complaint proceeds to initial dispute resolution assessment or initial compliance assessment. Whether a dispute resolution can be launched will be determined during the initial dispute resolution assessment process by the DR team.
20. For a referral to the Services for Prior Resolution, it is the EIBG-CM which takes the decision but the EIBG-CM can only refer a complaint to the Services with consent of the complainants.

Initial assessment phase

21. Replace the current multipurpose, comprehensive initial assessment with a simplified process which would:
 - define the complaint;
 - provide the complainants a comprehensive briefing on choices for complaint processing;
 - explore whether the complaint is suitable for an early resolution process and whether the complainants would agree to such an early resolution process; and
 - explore whether the complainants prefer a dispute resolution process or a compliance process.
22. Complaints suitable for an early resolution process and agreed by complainants would be transferred to the Services for a maximum of six months. It would be the sole decision of the EIBG-CM to decide whether a complaint is suitable for early resolution but a transfer requires the consent of the complainant.
23. Replace the initial assessment report with a very short decision documenting how the admitted complaint will be processed; upload the note on the EIBG-CM case website. This decision note should not be subject to consultation with Services.
24. If the complainant wants to explore a dispute resolution process, the complaint would be transferred for a maximum of 60 working days to the dispute resolution team, which would explore with the promoter and the complainant whether an agreement to proceed with a dispute resolution can be reached. If agreement to proceed with a DR process cannot be reached, the complaint would be transferred to the compliance function.
25. Complaints which enter the compliance track would start with initial compliance assessment, to establish whether preliminary evidence of non-compliance and project-related negative impacts warrants a full investigation, as proposed in section 4.3.2.

Early resolution process

26. Establish an early resolution option for admitted complaints the EIBG-CM considers can be resolved quickly by the Services, if the complainant agrees with such a process and the Services are willing to become engaged. The decision whether a complaint is suitable for early resolution rests solely with the EIBG-CM.
27. The early resolution process should be limited to a six-month time period with no possibility for extension.
28. If the issues raised in the complaint are addressed to the satisfaction of complainants within the time period, the EIBG-CM will close the case. If the issues are not resolved, the

complaint returns to the EIBG-CM for a preliminary compliance assessment; or for initial dispute resolution assessment in exceptional cases.

Case management procedures

29. Maintain only the extended procedure, based on the significant adjustments recommended in sections 4.3.2 and 4.3.3 of this report.
30. Maintain the preventive procedure with the adjustments recommended in section 4.1.3 of this report.
31. Eliminate all other procedures.

Scope of the compliance function

32. Establish the objective and focus of the EIBG-CM compliance function to determine whether there is non-compliance with project-related policies with EIB environmental and social policies/standards.
33. Establish whether there are negative actual or potential impacts related to the project and related to non-compliance with E&S policy/standards.
34. Establish that if there are findings of non-compliance with policies/standards, non-compliance and related negative impacts need to be corrected.
35. Establish that the EIBG-CM compliance function is mandated to recommend action by the EIBG to facilitate access to remedy in case of negative impacts related to the project and to policy non-compliance.

Access to compliance investigations

36. Establish an Initial Compliance Assessment which determines whether there is sufficient preliminary evidence for project related policy non-compliance and related negative impacts to proceed with a full compliance investigation.
37. Establish criteria to be applied in Initial Compliance Assessment, such as determining (i) preliminary evidence for alleged negative impacts; (ii) plausibility that alleged negative impact is related to EIBG funded investment; (iii) preliminary evidence for non-compliance with relevant project-related policies and procedures; (iv) preliminary evidence that alleged negative impacts are linked with possible non-compliance with E&S standards.
38. Issue an Initial Compliance Assessment Report within 60 working days.
39. Upload the Initial Compliance Assessment on the EIBG-CM website.
40. If conclusion is not to proceed with an investigation, the complaint shall be closed.

Extensive consultations on Draft Conclusions Report

41. Discontinue present extensive consultation process on draft Conclusions Report with Services and replace by a one stage 15-day commenting period. The EIBG-CM then has the sole authority to decide what comments provided by the Services to consider.
42. Abolish the requirement currently contained in the EIBG-CM Policy, that the EIBG-CM should agree with Services on recommendations for follow-up actions listed in Conclusions Reports.
43. Concurrently provide the draft Conclusions Report to the Services, the complainants and the Promoter and limit consultation process to 15 working days only.

Management Action Plan with Board approval in case of dissent

44. Introduce a MAP in which Services lay out follow-up measures to be taken in response to EIBG-CM investigation findings. Measures need to be specific and timebound.
45. If Services disagree with all investigation findings, they can decide not to define follow-up measures. A Management Response which states that no measures will be taken will be submitted to the MC for decision. If the MC agrees that no follow-up measures need to be taken, the Management Response will be published on EIBG-CM website.
46. If the MC disagrees with the Management Response, it will ask the Services to prepare a MAP which needs to be submitted to the MC for approval.
47. The MAP needs to be agreed upon with the Promoter for measures to be implemented by the Promoter.
48. The MAP needs to be consulted with complainants.
49. If Services are of the view that there are no non-compliance and related negative impacts, it will submit a MAP without follow up actions with a Management Response explaining their view why no follow-up actions are required. The Management Response will be published on the EIBG-CM website.
50. The EIBG-CM can continue to issue recommendations in Conclusions Reports but recommendations should remain high level and recommendations are not binding. No agreement with Services on these recommendations is required.
51. Services should submit the MAP for review to the EIBG-CM no later than 40 working days after issuance of Conclusions Report.
52. The EIBG-CM has 10 working days to respond to the MAP.
53. If the EIBG-CM finds the proposed MAP insufficiently responsive to findings of the Conclusions Report, then the MAP is submitted to the MC for approval.
54. If the MC considers the proposed MAP insufficiently responsive, the MC will ask Services to resubmit a revised MAP for MC consideration.
55. All MAPs, whether agreed with the EIBG-CM or approved by the MC, will be posted on the EIBG-CM website and subsequently monitored by EIBG-CM.
56. The Board will be substantively briefed by the EIBG-CM during semi-annual briefings on MAPs on which there was disagreement between the EIBG-CM and the Services and on decisions taken by the MC.
57. All EIBG-CM investigation reports and all MAPs will be routinely sent to the MC and the Board for information.

Follow-up and monitoring

58. The current monitoring process, which consists of quarterly information obtained from the Services to define the status of implementation should be replaced by a more substantive but less frequent review process consisting of a systematic review of information materials provided by the Services, project related documents, consultations with complainants and their representatives and selected site visits.
59. This review should be conducted at most at six-month intervals or alternatively yearly.
60. A review document presenting monitoring results should be shared internally with the Management Committee and Board and published on the EIBG-CM website.
61. The consolidated monitoring of all complaints should be complemented by selected in-depth complaint specific monitoring with a site visit and disclosure of this complaint specific monitoring report on the EIBG-CM website. Such in-depth monitoring should be

conducted for complaints presenting significant non-compliance and related negative impacts.

62. The present very skeleton reporting on closed complaints provided in the public annual reports needs to be replaced by regular disclosure of consolidated monitoring reports and the complaint specific monitoring reports. Reports must be posted on EIBG-CM website.
63. Monitoring of complaints on which no further progress on implementation of remedial actions can be expected should be terminated. A monitoring report be issued that the complaint is closed with unsatisfactory or only partially satisfactory implementation of remedial actions. This closing report should be uploaded on the EIBG-CM website.
64. If a revised EIBG-CM Policy introduces a Management Action Plan, monitoring needs to focus on agreed MAP measures.

Dispute resolution mandate

65. Revise the EIBG-CM Policy and Procedures to make it clear that:
 - Compliance, Dispute Resolution (not “Mediation”), and Advisory are the three functions of the EIBG-CM;
 - Dispute Resolution as a function uses a family of approaches, including but not limited to mediation, to achieve the goal of dispute resolution; and
 - the EIBG-CM does not have a fixed preference between dispute resolution and compliance. Rather, it uses the initial assessment process to determine which approach to use on a case-by-case basis.

Dispute resolution operating procedures

66. Revise the EIBG-CM Procedures to make it clear that:
 - Initial Assessments do not include fact finding regarding EIBG or promoter compliance or harm to complainants;
 - DR staff are directly involved in every initial assessment to talk with the complainant about the option to pursue a dispute resolution process; and
 - The primary criterion for directing a complaint to dispute resolution after initial assessment is the complainant’s informed preference for dispute resolution.

Initial assessment

67. Revise the EIBG-CM Procedures to clarify that:
 - EIBG-CM Initial Assessments that include a decision to transfer the case to DR do not require either a ToR for mediation/dispute resolution or a Mission letter from the EIBG-CM Head.
 - Initial DR assessments become a procedural requirement for the DR function once a case is transferred from Initial Assessment;
 - The Head of the EIBG-CM reviews Initial DR Assessments before they are finalised;
 - The output of an Initial DR Assessment is either an agreement to begin DR, supported by case-specific documentation of that agreement among the participating stakeholders, or a decision not to proceed to DR, in which case the complainant has the option to transfer the case to compliance for initial compliance assessment;
 - The timeframe for Initial DR Assessment is 60 working days.
68. Clarify the EIBG-CM Policy regarding the obligation of the Services to support dispute resolution

- Make it explicit in the Policy that EIBG project teams have an obligation to consult with the DR function both during initial DR assessment and in the ongoing process of dispute resolution; to support the voluntary engagement of the promoter in dispute resolution in consultation with the DR function; and to ensure that the promoter addresses issues raised in the DR process that are linked to the promoter's EIBG environmental and social performance requirements.
69. Support current DR function good practices in identifying qualified facilitators/mediators:
- Ensure that the DR function has adequate human and financial resources to identify qualified facilitation/mediation professionals, especially outside the EU, and to contract them.

Roles of EIBG project teams in DR processes

70. The DR function should continue to operate using good practices for structuring, supporting and bringing closure to dispute resolution processes. It should collaborate with local mediators/facilitators to document lessons learnt from each case in order to evolve and refine its practices over time and should regularly share those lessons with the facilitators/mediators in its network.
71. The EIBG-CM Procedures should be revised to:
- Eliminate the requirement for DR cases to close within 240 days (2.6.1). Instead, the Procedures should require a joint assessment by the EIBG-CM Head and the DR team of all DR cases that are still ongoing one year after the start of the DR process (formally, this could be the date of the initial DR assessment) , and every six months thereafter, to ensure that there is still a reasonable likelihood of resolution, or if not, to bring the case to closure. In DR cases that are closed with significant issues outstanding, the complainant should have the option to transfer the outstanding issues for initial compliance assessment⁷⁰.
 - Authorise the DR function to monitor the implementation of DR agreements for up to 12 months after the agreement was reached and provide a final monitoring report to close the case. Monitoring should only continue beyond 12 months if there is a clear justification for the continued involvement of the DR function. In DR cases that are closed after monitoring with significant issues outstanding, the complainant should have the option to transfer the outstanding issues for initial compliance assessment.
 - Make it clear that the timeframe for initial compliance assessment starts when the DR case is transferred to Compliance from DR.
72. The EIBG-CM should expand its outreach to the relevant EIBG Services, in collaboration with EIBG project team members who have been effective partners in dispute resolution processes, to share case experience and encourage more proactive and consistent EIBG project team engagement in dispute resolution processes.

Capacity/resources for the DR function

73. Provide adequate resources to the EIBG-CM to enable DR team to:

⁷⁰ The EIBG-CM Policy (para. 4.4.4) already provides the option for extension of deadlines for mediation of E and F cases (environmental/social and governance issues), but it would be clearer for the policy to state explicitly the expectation that DR cases should close within one year, and that open DR cases will be reviewed at the one-year mark and every six months thereafter.

- Participate effectively in every initial assessment, to ensure that the complainant is well-informed about DR and able to make an informed choice between DR and compliance.
- make field visits during initial DR assessment (and in exceptional cases during Initial Assessment) if the complainants and/or promoter face significant barriers in engaging with and understanding dispute resolution and the EIBG-CM DR option via virtual communication;
- organise and oversee each DR process, including field visits where needed to oversee complex cases; and
- hire qualified local/regional/international mediators when required.

Advisory

74. Revise the Policy to make it explicit that:
- The MC and the Board may request advisory notes from the EIBG-CM, with the understanding that the EIBG-CM cannot provide advice on ongoing projects that are or may be the subject of complaints to the EIBG-CM, but can advise on lessons learned from EIBG-CM cases and implications for EIBG policy, procedures, and resourcing;
 - The EIBG-CM may use its discretion to initiate advisory work on any issue that arises from its case experience, and which may be useful to the EIBG's Services, MC, and/or Board;
 - The EIBG-CM will conduct its advisory work in consultation with the Services and Management Committee (and may respond to advisory requests from the Board), considering what advice and lessons will be most useful to them, while maintaining its independence in initiating and producing advisory work; and
 - The EIBG-CM will issue advisory products periodically, addressing specific issues and key lessons learnt based on the complaints processed during the preceding period of operations.
75. Establish the norm of producing at least one publicly available EIBG-CM advisory work product each year.

Outreach and awareness building

76. The EIBG-CM should develop a public outreach strategy providing a structure to the activities already implemented and developing areas which may require further reinforcement e.g.: level, frequency and quality of mandatory training provided to staff including newcomers or key teams; role to play in proactively reaching out to affected populations; differentiated outreach for vulnerable people⁷¹; and consistent implementation across projects and regions.

⁷¹ EIBG Environmental and Social Standards (2022), Standard 10 Stakeholder Engagement, requires the promoter to run meaningful consultation that includes tailored measures to empower affected individuals and communities, in particular those who are vulnerable, marginalised, and/or discriminated against.”