

January 29, 2008

**MATRIX OF ISSUES RAISED DURING THE  
SECOND ROUND OF PUBLIC CONSULTATION ON THE ANTI FRAUD POLICY**

	<i>Topic - References are to paras in the amended policy</i>	<i>Stakeholder proposal</i>	Comments/Proposal from the Review Panel
	<b>ANTI-FRAUD POLICY</b>		
1	Preamble	<i>Dunnett:</i> The aim of the policy should be stated, using phrases from the CSR	Agreed - The aim of the policy will be stated and consideration will be given to using phrases from the CSR.
2		<i>Dunnett:</i> The paper takes fraud and corruption too lightly. Implicit in the policy is the belief that there is little corruption or fraud in EIB-financed projects. This tacit factual assumption should be articulated. Many countries in which the Bank operates, including EU states, rank low in the TI integrity index. Many of the Bank's operations are in spheres that are widely considered to be riddled with corruption and fraud, namely infrastructure works and notably airport construction.	The Bank takes fraud and corruption very seriously as evidenced by its commitments under the Uniform Framework and the development by EIB of the compliance (OCCO) and investigation (IG/IN) functions.
3		<i>Dunnett:</i> In paragraph 4 of the Uniform Framework, the Bank committed itself to promote ethical business practices and good governance. This engagement, confirmed in the above-quoted statements in the CSR, finds scarce expression in the paper. Yet there are many means for the Bank to promote ethics and not merely wait for reports of breaches to come to it. I would recommend a compact statement of the limits of the policy, defining the limits of its concern and the limits to its chosen instruments of intervention in support of the policy.	The instruments of intervention are as described in the various policy statements such as the Guide to Procurement. The Bank prefers not to draw limits around the Policy in order not to restrict its application.

4	Definition of Money Laundering (para 9)	<p><i>TI:</i> TI considers that the definition of Money laundering as used in section IV should be adapted to international standards, pointing out that also reckless behaviour ("wilful blindness") constitutes a criminal act. The current definition, that takes reference to the EU Directive 2005/60 might be misleading to EIB's employees. Therefore, TI strongly recommends to amend the definition in a way that money laundering is to be understood as:</p> <p>"the conversion or transfer of property, knowing (or recklessly not knowing) that such property is derived from criminal activity..."</p>	<p>The concern is noted, however, the Bank considers that it has taken appropriate steps to ensure the definition is not misleading by following the EU Directive 2005/60 and its definition of money laundering, which takes into account the Recommendations of the Financial Action Task Force (FATF). FATF is widely acknowledged as the foremost "international" body active in the fight against money laundering and terrorist financing. The Directive is therefore in line with international standards and is considered appropriate for the Bank and its status as the financing institution of the European Union. In addition, the European Commission participates fully in international bodies such as the OECD and the Council of Europe and has negotiated on behalf of the EU institutions, including the Bank, in respect of the relevant money-laundering provisions of the UN Convention on Transnational Organised Crime.</p>
5	Integrity Commitments (Para 12 - 13)	<p><i>TI:</i> welcomes the proposal to demand borrowers/promoters to provide Integrity Commitments within the Finance Contracts. However, there needs to be further elaboration on this matter to ensure that the highest possible standards are applied to these Commitments. TI therefore urges the EIB to take this requirement of the Integrity Commitment one step further, and demand that borrowers/promoters prove to the Bank that they have an actual active anti-bribery program in place. Especially when the borrower is a private company, acting as an agent to a government or a group of businesses within a public-private partnership, the EIB can have a strong impact in being a positive influence on corporate behaviour, improving the performance of the private sector on EIB funded projects. The Integrity Commitment is an opportunity for the Bank to demand from the borrowers to provide evidence that they have anti-corruption policies in place. TI's Business Principles for Countering Bribery (BPCB) and its related tools may be used as a basis for companies to be able to comply with this demand.</p>	<p>Agreed. As noted in the first matrix (item 21), the Integrity Commitment is not a separate document but a clause that forms part of the Finance Contract. It requires in substance the Borrower to warrant that it has not committed, and no person to its present knowledge has committed, any prohibited practices and that it will not commit, and no person, with its consent or prior knowledge, will commit any such practice. The clause also imposes an obligation on the Borrower to inform the Bank if it should become aware of any fact or information suggestive of the commission of any such practice. For future contracts, the Integrity Commitment will be updated in line with definitions in this Policy. The systematic coverage of integrity aspects, including an anti-bribery program, during appraisal will be introduced.</p>

6	Money Laundering (Para 12 - 14)	<i>TI:</i> the reporting obligations of any borrower should not be limited to changes in the ownership structure. Under the EU directive 60/2005, EIB will be obliged to investigate the shareholder's structure and identify each final beneficial owner who, either on a stand alone or an aggregate basis, controls 25 % or more of the share capital. We suggest that future borrowers shall be obliged to disclose, down to the level of the ultimate beneficiary, the ownership structure at least in regard to such shareholders/ultimate beneficiaries in possession of 25% of the stated share capital or votes	The Bank has duly noted the reporting obligation in Directive 2005/60/EC (Article 2 (6) related to the definition of beneficial owner) and the implications it has for the EIB.
7		<i>TI:</i> Given the latest trends in money laundering, we recommend expanding the measures described in Para 12 of the Policy to include mechanisms related to, or replacing, equity interests. Strong AML monitoring exists with regard to share capital. In TI's view, criminals tend to make less use of equity instruments, but use more complicated debt or hybrid debt/equity instruments. We recommend considering whether the identification processes should take care of these trends and should include such instruments.	Agreed. The Policy indeed includes a reference to the obligation of identifying the ultimate beneficial owner in order to cover the particular issue raised. The Bank has procedures in place to monitor trends in money laundering in order to be able to react on a timely basis and to take into account of emerging best practice to combat it.
8		<i>TI:</i> Reference is made to the jurisdictions under close monitoring by the Financial Action Task Force on Money laundering (FATF). According to international standards, the risk measurement for money laundering control purposes does not only include country risk, but also takes into consideration the risk exposure of the client itself and the risk exposure usually associated with the specific business. We therefore suggest redefining such high risk-customers and high-risk businesses, in which case OCCOs opinion should also be required.	The EIB has adopted a risk-based approach in line with the Directive 2005/60 and best international standards, which includes not only country risk but also the risk of business or the client itself (qualification as a PEP, etc.). This is normally done during the instruction of the project (eligibility criteria, KYC and integrity check), and in any case before the signature of the Finance Contract.
9	Preventive Measures (Para 12 - 14)	<i>TI:</i> EIB should also require the borrower to conduct its own effective due diligence process in the cases of private sector contractors/tenderers. For several years, TI has urged multilateral development banks to adopt a pre-qualification process for private sector bidders and contractors. A requirement for the borrowers to apply pre-qualification procedures that take into account good corporate practices could be included in the Finance Contracts, in relation to the procurement rules to be applied under an EIB loan	This recommendation is agreed with in principle and further consideration will be given to this matter. However, it is noted that, at present, tendering procedures are the responsibility of the borrower (which may or may not include prequalification) and therefore the prequalification measures referred to cannot be enforced by the Bank.

10	Corrective Measures (Para 16)	<i>Bankwatch Network:</i> The suspension of contracts or decision not to award a contract in case of allegations of corruption needs to be clarified and clearly spelled out. We see the potential problem of paralysis of projects based on ‘mischievous allegations’ (mentioned in the Bank’s response) but a case-by-case process does not inspire confidence that the Bank is committed to a systemic and coherent deterrent to corrupt practices. We reiterate that where corruption allegations are assessed as strong enough for the bank and/or OLAF to open a case, the contract should be suspended or the decision on awarding the contract should be postponed until the case is clarified. This option could be covenanted in finance contracts in favour of the lender to protect lender liability.	This recommendation is agreed with in principle. However, the Bank has previously noted that it believes that an automatic contract suspension could lead to paralysis of projects based on mischievous allegations. In order to mitigate this, the Bank retains the right to withhold non-objection and/or disbursement. Further consideration will be given to a systematic approach, however, in the meantime the case by case basis will be maintained. The Bank will also continue to monitor trends in the volume of cases.
11		<i>Bankwatch Network:</i> Suspension of contract and/or recovery of misapplied funds should be possible not only on the basis of a formal final court decision but also in case of clear administrative decisions, as noted by Transparency International and OLAF. That requires strong cooperation between the EIB and the Commission, involving EIB access to the Commission’s database of excluded candidates and bidders.	Agreed. The Bank is working with the Commission and will apply an enhanced system of exclusion to the Bank including debarment based on administrative decisions. Access to the Commission's database will also be sought. In the meantime, it is highlighted that failure by the borrower to comply with a requirement included in the Finance Contract can lead to suspension. Furthermore, the Bank does not require a criminal conviction for fraud or corruption before it would suspend
12		<i>Bankwatch Network:</i> The policy should elaborate on what are the ‘appropriate legal steps to recover misapplied funds’ as mentioned in point 13 of the policy.	Under the Finance Contract, the Bank has the right to demand repayment if the borrower fails to comply with his contractual obligations. The Bank may also exercise any other right it has at law to require reimbursement of funds.
13	Sanctions/Debarment (Note 1)	<i>TI:</i> As mentioned in TI’s submission to the first round of consultation, TI has previously produced a set of recommendations for the Development and Implementation of an effective Debarment System in the EU which the EIB is encouraged to examine and take into account in its discussions with the European Commission in this matter. In particular: (i) the reference to debarment in the policy is included in the section on sanctions available to the Bank associated to Finance Contracts. This creates confusion since the link to procurement is not evident. We recommend that the structure of the document is adjusted to allow for this relationship to be clear; and (ii) The second draft of the guidelines still mention debarment of “any candidate tenderer who has been convicted by a final judgment”. TI insists on the importance of the EIB expanding the concept and allowing for debarment based on administrative (non res judicata) decisions, for the reasons included in TI’s first submission to the EIB.	Agreed. The Bank is committed to strengthening the effectiveness of the sanctions systems available to it. To achieve this, the Bank is co-operating with the European Commission and will apply an enhanced system of exclusion to the Bank, including debarment based on administrative decisions, taking into account the new provisions in force within the EU Institutional framework and ensuring the Bank has access to the Commission's database of excluded entities. The Bank’s Anti-Fraud Policy will be updated in due course and the Annual Report of Investigations will include updates on progress.

14	Debarment (Note 1)	<p><i>Ms. Williams (Nott Univ):</i> My main concern is the suggestion in the policy document that EIB will be able to debar or exclude firms that have been debarred by EU Member States, under the EC Procurement directives. Whilst it may be possible for EIB to debar firms debarred by other EU institutions such as the Commission, EIB will be unable to debar firms that have been debarred by EU countries, as there is NO database of firms excluded, or convicted in these countries and it is unlikely that these countries will share information on criminal convictions because of differences in data protection legislation and because Directive 95/46 on the free movement of data does not apply to criminal law activities. Also, it is unlikely that such a database will exist in future as in many EU countries, debarment is carried out by individual contracting authorities and there is little cooperation within national borders, much less cooperation on an EU wide basis.</p>	<p>This is an important concern shared by the Bank. The Bank is following (both at national and Community level), the developments related to the establishment of an effectively functioning EC wide debarment system. The Bank has noted the European Commission's intention to consider whether the Community exclusion system needs further improving and to look at ways of making the rules more transparent (Annual Report 2006 from the Commission to the European Parliament and the Council on the protection of the financial interests of the Communities).</p>
15		<p><i>TI:</i> EIB should continue with its coordination efforts with other IFIs to reach common best practices in debarment.</p>	<p>Agreed. The Bank will continue to coordinate its activities with the MDBs on debarment and a range of other subjects of common interest.</p>
16		<p><i>Bankwatch Network:</i> We believe it is of utmost importance that the EIB cooperates with the European Commission in the definition of adequate debarment procedures. We urge the EIB to include a precise debarment procedure in the final draft of the policy and not to postpone this decision until the review of the new policy. Such a decision is needed in order to harmonise EIB operations with other IFIs under the terms of the Singapore agreement</p>	<p>Agreed. This is indeed an important matter for the Bank. The Bank will put a debarment procedure in place, and is also co-operating with the European Commission in this respect. The Bank also places importance on having an effective policy in place as soon as possible and considers it appropriate to finalise the policy now with a caveat that debarment matters are being addressed and will result in amendments to the policy as soon as the associated procedures are finalised. See also item 15.</p>
17		<p><i>Bankwatch Network:</i> We regret that the EIB cannot even access the European Commission's internal database of companies found guilty of fraud or corruption. EIB should push to change this state of affairs.</p>	<p>Agreed. The Bank continues its dialogue with the Commission on this matter.</p>

18		<p><i>Protimos/CRMB:</i> Questions remain concerning the IFI's approaches to debarment and cross-debarment under the IFI Uniform Framework of September 2006. The EBRD has already debarred Lahmeyer, following the World Bank's decision to debar the company, but this example has not been followed by other financial institutions.</p> <p>EIB appears to have no formal exclusion procedure in place, at present. After the first stage of the consultation process, consultees were informed that EIB intends to establish such a system, taking into account the EU Framework. In its capacities as an institution formed by the EU, as the lending agent of the European Development Fund, and as an International Financial Institution, it is respectfully submitted that the starting point for such a framework may be found within four of the articles set out in the Financial Regulation (Arts 93-96 - see Annex 1)</p>	<p>Agreed. The text cited from the Financial Regulation will provide a useful reference point in developing the debarment policy. It is also recalled that a Joint Statement has been issued by the heads of the MDBs, including the EIB: " Each of the member institutions of the IFI taskforce has a distinct mechanism for addressing and sanctioning violations of its respective anti-corruption policies. The task force recognizes that mutual recognition of these enforcement actions would substantially assist in deterring and preventing corrupt practices. The member institutions will explore further how compliance and enforcement actions taken by one institution can be supported by the others."</p>
19	Debarment as a Sanction	<p><i>Dunnett:</i> the Bank should make the sanction of debarment an integral part of its future policy. Without a sanction of debarment, the technique of the Integrity Covenant may be a mere lip service to business ethics. If the Bank would have a wider policy to debar contractors, it will strengthen the hand of promoters in their dealings with contractors and, in those cases where illicit conduct is suspected, it allows the Bank to address the contractor directly and, where necessary, bypass the channel of the promoter's own organization. Indeed, the sanctionable practices should be extended to cover not only fraud, corruption, collusion and coercion but also obstructiveness towards investigations. The IBRD already penalizes obstruction.</p>	<p>Agreed. See above (item 13). On sanctioning obstruction of an investigation, see below (item 46).</p>
20		<p><i>Dunnett:</i> Debarment policy should be designed to be flexible. Its aim is deterrence and not punishment. The penalty would be imposed only after due and fair civil process. It should be commensurate with the gravity of the case. It should be widely enough applied as to be effective. It should be published, since the Bank is committed to establish with other IFIs a pattern of cross-debarment (and, if necessary, the contractor should in advance have agreed to publication). The sanction could be suspended to allow the offender to reform, and the sanction should be limited in time and be subject to review once the offender has reformed.</p>	<p>Agreed. The Bank will take into account these comments when designing its debarment process.</p>

21		<i>Dunnett:</i> The fact that the EU procurement directives provide a limited process of sanction against persons who have been convicted of certain offences does not prevent the Bank from taking action. While the Bank is bound to follow EU law and policy instruments, it is not limited by them. There are good particular reasons for not being bound by the EU sanction mechanism:	See above (items 13 - 20)
22		(i) while the directives require member states to set up sanctions for certain offences, the context for the EIB is different. Debarment by the Bank and debarment by a purchasing authority are independent matters	See above (items 13 - 20)
23		(ii) the directives apply only to the public sector of the EU. That represents one-third of the Bank's activity. The directives do not apply to private sector lending by the Bank; and they do not apply to lending outside the EU. The Bank is free to set its own policy in those spheres.	See above (items 13 - 20)
24		(iii) the aims of the Bank's sanctions would probably differ from the EU legislator's.	See above (items 13 - 20)
25		(iv) the Bank has a power to collaborate with other MDBs, as provided by Article 16 of its Statute. It has exercised that power by signing the Uniform Framework and thereby undertaking to study the setting up of a system of reciprocal debarment. It should pursue that undertaking with due vigour.	See above (items 13 - 20)
26		(v) the EU process is limited to contractors that have been convicted. Member States could impose a stricter exclusion policy, save that it may be hard for them to show that such a policy has no improper discriminatory effect. A common debarment policy among the MDS will not work well, if it is limited to debarring parties convicted of certain crimes. The process of conviction is so rare, slow and unpredictable that such a limitation would emasculate the policy. A policy founded on reasonable suspicion could be coherent and conformable to standards of natural justice and due administrative process.	See above (items 13 - 20)
27		(vi) to prepare for a policy of debarment, the Bank should immediately compile a database on contractors. The Bank staff should be able to ascertain the aggregate value of the contracts with individual contractors and suppliers that have been financed by the Bank. So long as this information is lacking, the credibility of a policy of sanctions will be impaired.	See above (items 13 - 20)
28		<i>Dunnett:</i> The Bank should not ignore the legal constraints that may shackle progress on a debarment policy. The Bank should obtain formal advice on its scope to introduce such a policy.	See above (items 13 - 20)

29	Procurement / Covenant of Integrity (Paras 15)	<i>Bankwatch Network:</i> We would like to underline our disappointment with what we perceive as the very limited and vague legal status of the covenant of integrity, despite the integrity commitment, which is part of the finance contract. For now there is still very little clarity on integrity commitments – their format and their legal leverage.	The Bank draws attention to the Covenant of Integrity being a commitment from a bidder to the promoter/borrower as part of the bidding process and that it forms part of the contract between bidder and promoter. A breach of the Covenant would amount to a breach of contract, the effects of which would be dealt with in accordance with national law governing the tendering procedure. The Bank's Guide to Procurement identifies that any such breach may lead to EIB cancelling all or part of the Bank financing for the project in question. See also item 5.
30		<i>Bankwatch Network:</i> We understand that tenders are regulated by national law, but disagree that the only action that the EIB could undertake is eventually to recall the loan. By leaving the ex-ante screening only to project directors and the solution of potential problems only to the promoters, the EIB refuses to consider the possibility of including legal mechanisms as a deterrent to illegal acts for promoters and borrowers. EIB should take all possible pro-active steps to prevent corruption in the projects it backs.	The Bank takes these matters seriously and has proactive ex-ante deterrent procedures in place as required, notably by imposing safeguard measures as part of the Finance Contract, which include requiring the borrower to hire a firm of experts to assist and advise on procurement processes.
31		<i>Bankwatch Network:</i> Given that contracts are usually filed in countries other than the host country and are executed under specific law chosen ad hoc in different countries, we believe that the EIB could introduce guidelines and criteria for borrowers and promoters to refer to appropriate legal systems before they approach the Bank for funding. It is also crucial that the Covenant of Integrity be signed by all members of consortia or joint ventures benefiting from EIB support, potentially including the parent companies of the corporations involved.	Agreed. The guidelines will be reviewed. The Bank will also make a more explicit reference to joint venture partners in the Covenant of Integrity. It is highlighted that all members of a consortium are indeed covered by the Finance Contract and therefore are bound by the Covenant of Integrity.
32		<i>Bankwatch Network:</i> There is a need to establish monitoring mechanisms to assess actual adherence to the integrity commitments. We would support, as a possibility mentioned in the consultations on September 4th, making tendering procedures require bidders to include in their documentation information on all cases where they were charged with corruption or any corrupt, fraudulent, coercive or collusive practices.	This is an important issue for the Bank and the Covenant of Integrity includes an obligation to inform the borrower of the matters listed. See also item 5.
33		<i>TI:</i> welcomes the inclusion of a requirement for Covenants of Integrity to be provided by contractors/bidders to the borrowers but they should extend beyond such declaration. EIB should ask the borrower/promoter to demand from the contractor/bidder evidence of practical measures taken within the company to prevent corruption, such as anti-bribery policies, training programs, codes of conduct for employees, etc.	See above (item 5)

34		<i>Ti:</i> As part of its due diligence, EIB could do sample checks of not only the correct application of the procurement rules by the borrower, but also the adoption of the Covenants of Integrity by the contractors/bidders, and the measures taken by the borrowers to verify the compliance of the contractor/bidder with the Covenant's provisions	The Bank agrees with the importance of such checks and current procedures include a systematic review, as part of the no-objection process, to ensure the correct application of the procurement procedures by the borrower. The Bank checks that the bidding documents include the Covenant of Integrity and, after contract award, receives a signed copy of the contract including the Covenant of Integrity.
35		<i>Protimos/CRMB:</i> When a breach of the Covenant of Integrity has been alleged/proved, to be dealt with 'in accordance with national law', how does EIB perceive its obligations in competing jurisdictions, where it is not, and cannot be clear in which jurisdiction the offence has actually occurred?	Any dispute regarding the applicable law in the case of conflicting jurisdictions would be dealt with in accordance with the provisions of the national law governing the tendering procedure in question.
36		<i>Protimos/CRMB:</i> As a matter of law, will EIB insert a term within the financial contract which indicates in which jurisdiction a dispute of this sort should be addressed?	The Finance Contract indeed contains a provision on the governing law and the jurisdiction which is competent to deal with disputes arising out of the contract.
37		<i>Protimos/CRMB:</i> If the Covenant of Integrity contained an express term, agreed with the contracting partner, determining which jurisdiction would apply, in the event of an investigation culminating in legal proceedings, either for breach of contract or for the criminal offence of corruption, then existing concerns over the burden of prosecution, conflict of laws, or res judicata would thus be pre-empted, the Covenant would undoubtedly carry greater weight as a legally binding undertaking, agreed pre-determination of jurisdiction as a term, would strengthen the Covenant and such pre-determination would address any difficulties faced by the Development Banks based in jurisdictions where the OECD anti-bribery convention does not apply.	Agreed in principle - further consideration will be given to the recommendation. At present, any effects of the breach of the Covenant would need to be dealt with in accordance with national law governing the tendering procedure in question.
38		<i>Protimos/CRMB:</i> EIB should require a Covenant of Integrity to be signed by all parties, including partners, sub-contractors, agents and all others referred to, in the model covenant set out in the EIB's Guide to procurement so that a greater sense of integrity might be derived from such undertakings.	This is an important issue for the Bank. Partners and agents are already included in the Covenant of Integrity. The signatory (ies) of the Covenant of Integrity is (are) responsible for ensuring that all parties referred to in the Covenant comply with its provisions.
39	Strengthen the Covenant of integrity	<i>Dunnnett:</i> The Integrity Covenant could merit examination for improvement along the following lines:	The Bank will take the issues raised (items 39-46) into account when designing its debarment process

40	(i) its definitions of prohibited practices differ from those in the Bank's paper. The definitions in the Covenant are more explicit and better adapted to their context than are the brief definitions given in the paper; they should be aligned with the laconic text derived from the Uniform Framework, and be accompanied by with some explanation.	Agreed. The definitions in the Covenant of Integrity have already changed to be consistent with the Uniform Framework.
41	(ii) Extend its use to the EU, at least in certain countries and classes of project;	See below (item 47)
42	(iii) There could be a reciprocal obligation on the part of the promoter to inform the contractor of suspicions of corruption that may affect the latter's interests, e.g. by a rival tenderer.	The promoter must indeed take all appropriate measures to ensure genuine competition between the bidders including, as the case may be, exclusion of bidders found guilty of corruption. This applies as promoters are bound by the fundamental Community law principles, such as the principles of transparency and equal treatment. To date, the Bank has considered that this provides sufficient protection for the contractor. Further consideration will be given to the need for any specific obligation of notification.
43	(iv) There could be an arbitration clause that would be distinct from the dispute resolution mechanism of the contract. Alternatively, a binding process of conciliation may be worth consideration.	This is an important issue for the Bank and as a part of the supply contract, the Covenant of Integrity should be covered by the dispute resolution mechanism provided for in the contract. Such a mechanism may include arbitration.
44	(v) The tenderer could recognise a duty of care towards other tenderers and that, consequently, any breach of the covenant might render it liable to compensate other tenderers for the expense of tendering and eventual loss of profit. For this purpose, the tenderer should acknowledge that the owner might pass its suspicions of one tenderer to the other tenderers.	See above (item 42). Tendering procedures indeed already contain provisions on the appropriate review mechanism allowing damages to be awarded to aggrieved parties.
45	(vi) The covenant should be an integral part of the supply contract, and breach of the covenant should be a breach of an essential term of the contract. It could be good to affirm this principle. It may be redundant but it may serve as a warning.	Agreed. The Covenant of Integrity is already part of the contract (see section 3.5 of the Guide to Procurement).
46	(vi) Contractors should note that obstruction could be visited by the sanction of debarment.	Agreed in principle, however, it is also highlighted that under the EC public procurement directives which provide the basis for the Bank's procurement policy outside the EU, obstructiveness is not a ground as such for debarment.

47	Preventive Measures (Para 15 - 17)	<p><i>Tl:</i> At present the policy proposed by the Bank assumes that within the EU, if laws are in place this should be enough. However, this has not always prevented corruption, even in countries with solid institutions and judicial systems. In that sense, even though corruption might be a more serious danger in countries outside the EU, where institutions might be weaker, being active in preventing risks of corruption in EU countries should also be a priority for the EIB. The Bank should consider preventive measures such as those outlined in the section for Finance Contracts and Procurement Procedures to be applied to all activities in all countries, not just outside the EU, in particular measures such as the Integrity Commitments to be provided by borrowers/promoters, and the covenants of integrity to be required by the borrowers to the contactors, which are not part of the current EU legislation. We strongly believe that the Bank could adopt such measures within the existing EU framework since they don't contradict but in fact take further the transparency and integrity provisions of the EU guidelines.</p>	<p>These recommendations will be considered further. It is indeed noted that, at present, the EU Member States have the obligation to respect the EC public procurement legislation, including the provisions regarding fraud and corruption. Within the EU, project promoters and bidders/contractors are already subject to national integrity measures and controls transposing the relevant Community provisions. For projects outside the EU, these provisions are substantially reflected in the integrity commitments contained in the Finance Contract and the Procurement Guide. Also see item 5.</p>
48		<p><i>Dunnett:</i> EIB should align its practices across all its regions of operation. Differences of treatment should be founded on the substantive differences in the perceived incidence of fraud and corruption, and in the quality of judicial control, not on the formal difference of the mandate under which the Bank operates. The Bank's commitments in the Uniform Framework and in the CSR make no distinction between projects in the Member States and projects outside the EU. Despite the restraints under which the Bank operates, the Bank has scope to recognise that prohibited practices abound within certain EU states. In the first two years of operation, the Inspector General received twice as many complaints on projects within the EU as on projects outside the EU. The instruments of the Integrity Commitment and Integrity Covenant should be extended to the EU.</p>	<p>See above (item 47)</p>

49		<i>TI</i> : EIB should continue to conduct its own effective due diligence regarding the financed institution when making loans or investments, especially whenever the recipient is not directly a government but a State Owned Enterprise, other type of public sector entity, a private agent to a government institution or a public-private partnership. The EIB should review not only credit worthiness, but the track record of the recipient of funds in relation to integrity policies (including its individual members when it comes to partnerships), in order to check whether the funds are going to reputable entities.	This is an important issue for the Bank and in line with international best practices, the Bank, through OCCO, and in cooperation with the operational Directorates, has a procedure in place to conduct systematic and integrated assessments of the customer.
50	Definition of Staff Member (Paras 21-22)	<i>Luis Socorro</i> : From the EIB various code of conducts, I could not find a definition or indication to "non-staff members". Although the EIB may not have one, I think this section of the policy should include not only staff members and business partners but also non-staff members. In the UN system, those non-staff members are consultants (temporary), service contract holders (drivers, project personnel, etc) that just have a contractual relationship with the Organization to provide certain services. Even though they are not considered staff, they are considered "personnel" and are obliged to the provisions of the code of conduct	The Staff Code of Conduct covers also non-staff members (see section 1 concerning its scope).
51	Investigation of Misconduct (Paras 21-22)	<i>Luis Socorro</i> : If OCCO is responsible for the administration of the code of conduct, then does it mean that IG/IN only conducts investigations related to financial fraud? Are misconduct and harassment/sexual exploitation being addressed by IG/IN or is this done by OCCO, including any investigations?	IG/IN are responsible for investigating any allegation of fraud (financial or otherwise), corruption, collusion or coercion; OCCO are responsible for investigating other forms of misconduct (discrimination, sexual harassment, as well as AML and CTF).
52	AML (Para 18)	<i>TI</i> : the EIB's internal guidelines should make reference to the anti money laundering guidelines confirming that when a report is filed the client concerned is not to be informed of any reported suspicion	The Bank addressed this concern by following the Directive 2005/60/EC, which indeed prohibits disclosure to the customer concerned of the fact that there is a suspicion of money laundering or terrorist financing.
53	Abuse of tax havens (Para 18)	<i>Bankwatch Network</i> : we would like to see more clearly how the EIB is adopting a pro-active policy that vigorously encourages companies to avoid this practice. In this regard, we note how the World Bank recently agreed to study in detail the development implications of financial flows through tax havens	The Bank implements the relevant FATF 40 + 9 Recommendations, applies AML-CFT principles contained in the relevant EC Directives and conforms to best international practice. In particular, OCCO checks ex-ante each offshore operation to ensure that there is no tax evasion, aggressive tax avoidance, money laundering, the financing of terrorism, or generally, any form of fraud and evaluates this prior to the conclusion of the operation. The Board is informed where offshore financial centres are involved.

54	Whistleblower protection (Paras 27/28 and Note 2)	<i>TI</i> : TI welcomes the revision of the existing provisions regarding whistleblowers' protection and is willing to give the Bank feedback and any other input it needs for preparation of this new policy	As noted in the Policy, the Bank is currently reviewing its existing provisions concerning the protection provided to whistleblowers with the aim of establishing an integrated and comprehensive approach to this issue. The review also takes into consideration the existing framework and experience of the EU Institutions and international best practice.
55		<i>Bankwatch Network</i> : EIB's commitment to develop a more advanced internal policy for protecting whistleblowers is welcome. We would be happy to contribute to the development of this policy and are keen to be consulted by those in charge of drafting the new policy before it is finalised. We believe there are several key principles to whistleblower protection that should become cornerstones of the policy, as reflected in GAP's best practice memo. They include:	Each observation on whistleblower protection will be noted during the policy review.
56		(i) Whistleblower protection should extend to all Bank staff, including former and temporary employees, consultants and contractors	See above (item 55)
57		(ii) Employees must have the ability to report directly to multiple authorities, including the Bank's board. This action should be permitted and encouraged	See above (item 55)
58		(iii) The independence of the Bank's investigative unit must be ensured by having it report directly to the Bank board and subject to external evaluation	See above (item 55)
59		(iv) Criteria for protected disclosures and prohibited retaliation must be standardized based on existing and tested international norms. The definitions for protected disclosures, banned retaliation, and permissible audiences have been standardized in legal instruments under the International Labor Organization, the Universal Declaration of Human Rights, the OAS Model Whistleblower Law and the U.S. Whistleblower Protection Act. The EIB should apply these definitions to its own operations.	See above (item 55)
60		(v) Standards of proof of retaliation must be adopted and applied placing the burden on the Bank to prove that its representatives have not retaliated when whistleblowers report harassment and professional reprisal. GAP recommends standards identical to those adopted by the U.N., O.A.S. and U.S. Whistleblower Protection Act, among others	See above (item 55)

61		(vi) Due process rights must be accessible and enforceable. In the absence of a credible and binding internal adjudicatory alternative, access to an external adjudicative body separate from the Bank is necessary to pursue claims of retaliation for whistle blowing. Until such a forum is available, current administrative conflict resolution mechanisms must be reformed to operate on due process norms and must be given the power to issue "make whole" remedies, including special attention to the unique vulnerabilities of visa holders	See above (item 55)
62		(vii) Fundamental due process by an impartial and public tribunal is enshrined in international law and the law of most nations. GAP advocates modernizing procedural rights for internal appeals, and adding the option for binding external arbitration. These rights include: being represented by professional counsel, a formalized discovery process for relevant evidence, open hearings, bringing witnesses forward, decisions in writing with detailed reasoning, and a balanced and incorruptible process for selection of tribunal members. GAP strongly endorses replacing the existing appeals processes with alternative dispute mechanisms external to the Bank where both parties determine the decision-makers by a strike and mutual consent process (like jury selection), and the parties share the costs of the process (which are always significantly lower than litigation).	See above (item 55)
63	Proactive Investigations (Paras 29 - 30)	<i>Luis Socorro</i> : The policy does not include a "proactive investigative work" by the IG/IN. Although it was addressed in the previous responses of the first round, there was no indication of such work in the OCCO charter, the integrity policy or the code of conducts (staff, board of directors, audit committee, etc). Unless IG/IN is only going to conduct reactive investigations, the policy should consider proactive investigative actions, not necessarily voluntary disclosure programs or due diligence work.	Para 7 of the Procedures states that IG/IN can open a case after receiving a complaint or "becoming aware of an issue". The policy and procedures allow IG an active role in pursuing the Bank's zero tolerance policy and the Bank will, with the full support of OLAF, continue to fight against prohibited practices (including fraud and corruption), money laundering and terrorist financing in its operations. OCCO also undertakes proactive screening of pipeline projects. The types of proactive investigations to be undertaken by IG will be considered further.

64	Proactive vs. Reactive (Paras 29 - 30)	<p><i>Bankwatch Network:</i> EIB's general approach to fraud and corruption problems remains highly reactive. To fight the "cancer" of corruption and achieve its stated 'zero tolerance for corruption' commitment, the EIB must make anti-corruption work a key priority for the institution. The Bank's current attitude seems to us unacceptably lax and complacent, relying on the fact that the EIB has detected only a limited number of illegal acts affecting its operations. It would be a serious mistake to under-estimate the magnitude of the problem just because EIB's capacity to detect corruption may be inadequate. The Bank shows little signs of taking a genuinely proactive approach to preventing corruption and we hope that the Bank is not merely trying to minimise the reputational risk corruption poses, but is fully committed to improving the development impacts of its lending (we note that in all extra-EU lending, the Bank is supposed to conform to EU development goals, and in ACP lending EIB operations fall under the development objectives of the Cotonou Agreement).</p>	<p>This is an important issue for the Bank and it takes the need for, an delivery of, a pro-active approach in pursuit of its zero tolerance policy very seriously. As noted above, the Bank will, with the full support of OLAF, continue to fight against prohibited practices (including fraud and corruption), money laundering and terrorist financing in its operations. Additional proactive investigation methods will also be considered, for example:</p> <ul style="list-style-type: none"> <li>- project review in a high risk country/sector; and</li> <li>- further staff training and awareness</li> </ul>
65		<p><i>Bankwatch Network:</i> EIB should take advantage of its unique blend of development and commercial objectives to become a frontrunner in the fight against fraud and corruption and develop its own pro-active approach to fight corruption that goes well beyond the Singapore commitments</p>	<p>Agreed - see item 64 above. For the Bank's role as a development partner supporting implementation of the Millennium Development Goals, please see: <a href="http://www.eib.org/about/news/the-eib-a-development-partner-and-the-millennium-development-goals">www.eib.org/about/news/the-eib-a-development-partner-and-the-millennium-development-goals</a></p>
66		<p><i>Protimos/CRMB:</i> EIB should consider the merits of a proactive, rather than a reactive approach to corruption. As part of this proactive approach, and as a consequence of its increased cooperation with OLAF, EIB should consider adding to its policy statement a clause in which it sets out a cooperative approach to the criminal prosecution of corruption, together with a clarification of its position on the debarment of a contracting company found guilty of such an offence. Part of such clarification might be the compilation of a set of criteria by which EIB could be satisfied that the criminal proceedings were unimpeachable, and which, where met, accordingly triggered the sanction of automatic debarment by EIB.</p>	<p>On proactivity, see above (item 64). The clarification sought on conviction leading to debarment will be addressed in the Bank's debarment process, see above (item 13 et seq).</p>

67		<i>Dunnett</i> : The paper gives no hint of readiness to be active in rooting out fraud. It is notable that only 13% of complaints made in 2006, i.e. five cases, concerned fraud. Yet the aims espoused by the bank imply an active policy. The Bank's Corporate Social Responsibility Report for 2006 (the CSR) states, at page 22, that the Bank applies zero tolerance to credible evidence of fraud and corruption. The Inspector General declared that there was little evidence of corruption. He gave no hint of his aim to carry out the commitment made in the Uniform Framework at paragraph 6 to develop tools to assess the incidence of corrupt practices.	See above (item 64).
68	Prosecutions and EIB's Role (Para 43)	<i>Bankwatch Network</i> : Clarification on how the Bank's findings on corruption instigate prosecution – we find the EIB response to this comment highly disappointing. The policy does not indicate how such prosecutions would be instigated	It is the function of the domestic jurisdiction (usually the borrower but may also involve other countries in which criminal acts have occurred) to commence or otherwise initiate criminal prosecutions. Where a Bank investigation obtains credible evidence to indicate a criminal offence may have been committed, the relevant materials are, and will be forwarded to OLAF and to the authorities concerned for appropriate follow-up action (including regulatory action as well as further investigations and where appropriate prosecutions).
69		<i>Protimos/CRMB</i> : Will EIB be satisfied, after incriminating information is handed to the any of the relevant national authorities, if no action is taken, either in the country where the project is being implemented, or in the country where the contractor is registered?	Decisions on investigations and prosecutions are taken by domestic law enforcement agencies and the judicial processes of borrower countries. The Bank has and will continue to cooperate with national jurisdictions to the fullest extent possible where assistance is sought to follow-up on referrals.
70		<i>Protimos/CRMB</i> : Where an investigation has revealed the existence of corruption, and no action is taken by the national authorities in any relevant country, what view will the EIB take? Will it institute debarment proceedings in any event? Will it publish that information?	On referrals, see above (item 72). The questions of whether an entity will be debarred and what publicity is accorded to the debarment will be considered in designing the debarment procedure to be adopted by the Bank, see above (item 13 et seq).
71	Annual Report of Investigations (Para 46)	<i>TI</i> : The new draft includes the provision for an annual report on findings of disciplinary actions. TI welcomes this and suggests that such report should include not only activities but also concrete results of completed investigations and sanctions applied, as well as information regarding on going investigations.	Agreed. This was the first Annual Report of Investigations to be published. As the Bank's experience develops, the style and content of the Annual Report will evolve (with due regard to banking confidentiality requirements).

72		<i>Bankwatch Network</i> : the publication of the report is welcomed as a positive step towards transparency in EIB operations but there is a disappointing paucity of actual content and in the level of information available, especially with regard to cases where the Bank found actual fraud or corruption.	See above (item 74)
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73	Review and Updating of Policy (Paras 47 - 48)	<i>TI:</i> The information obtained in compiling results of the implementation should also be fed back into the periodic review process of this policy that has been included in the latter draft.	Agreed. The Policy will be reviewed and updated regularly and within a maximum period of 5 years. The process will include analysis of results achieved.
74		<i>TI:</i> Regarding the period for the policy review, it would be recommendable to perform such revision in shorter periods at the beginning (2 or 3 years) while the process is stabilised and experience gained can be adequately taken into account.	Agreed. The Review Period will be flexible to allow updates to occur as and when necessary.
75		<i>Dunnett:</i> The Bank's proposed policy should be considered an interim policy. This is for many reasons. Firstly, the paper itself acknowledges that one key aspect of the policy is under review, namely the debarment process. The comments below will show how the penalty of debarment is essential to a viable active policy consistent with the Bank's avowed aims and principles. Secondly, the whistleblower rules are still to be put in place. Thirdly, the Inspector General's report for the year 2006 shows an evolution in the complaints and especially in their geographical spread. It is therefore essential to conduct a thorough formal review of policy within a shorter period than the five years that the Bank proposes.	See above (items 76-77)
	<b>Miscellaneous Issues</b>		
76	Civil Society Engagement	<i>TI:</i> EIB should add provisions providing for civil society engagement and monitoring of its financed projects. Civil society participation and consultation can play an important role in ensuring borrower accountability and reducing diversion of bank funds. Incorporating Integrity Pacts with monitors into the anti corruption measures applicable to procurement would be an example worth exploring	The Bank's environmental and social policy and procedures (ref. Environmental and Social Practices Handbook) and Public Disclosure Policy provide civil society with the possibility of being involved in EIB's activities.
77		<i>TI:</i> EIB should take a more active position in promoting such engagement, by discussing with borrowers/promoters specific measures to get civil society involved.	Agreed. The Policy (para 28) has been amended to include specific reference to civil society, as follows: "All allegations by EIB staff members, EIB business partners, members of the public (including civil society) of suspected prohibited practices..."

78	Implementation of the Policy	<i>Ti:</i> the anti-fraud policy will not only demand decision making at the highest levels, but dissemination, training and compliance measures all across the EIB to make sure all actors within the EIB and all stakeholders contracting or carrying out activities jointly with the EIB are aware of this policy.	Agreed. The Bank will roll out the policy in a number of ways once it has been finalised, including training and presentations to staff, Borrowers representatives etc.
79		<i>Ti:</i> EIB is encouraged to publicly announce the steps towards implementation of this policy and report on its progress, successes and lessons learned, as this can only improve and reinforce the process.	Agreed. The Bank will provide an update on progress in implementing the Anti-Fraud Policy in the Annual Report of Investigations.
80		<i>Bankwatch Network:</i> we urge EIB to adopt a pro-active policy which goes far beyond the minimum legal provisions binding EIB operations, using the enormous leverage provided by its €50 billion annual portfolio to pre-empt corruption and implement innovative new procedures, including pro-active ex-ante due diligence for all operations. This may require new financial and human resources, including training for all EIB staff, to ensure operationalisation and mainstreaming of such policies	Agreed. On preventive measures, see above (Item 9); On proactive due diligence, see above (item 49). The Bank is committed to ensuring all staff are fully aware of the policy and its implications for loans going forward. Training sessions for all EIB staff will be provided.
81	Wolfsberg Principles	<i>Ti:</i> EIB should consider in addition to the principles that inspired the policies adopted by the Wolfsberg Group in this policy, but also – beyond the common grounds of Wolfsberg – apply all Principles set up by the Wolfsberg Group also in regard to corruption in private business (as opposed to "public corruption" as currently practised by the Wolfsberg Banks)	The definitions adopted by the Bank through the Uniform Framework do not differentiate between public and private corruption.
82	Disclosure of Representation agmts/agents	<i>Bankwatch Network:</i> We strongly urge that the Bank take seriously the issue of agents, and that the final draft of the policy requires transparency of representation agreements and of the fees paid to the agents. EIB must require that agents' fees be clearly disclosed.	Agreed. The Bank recognises the importance of this issue in connection with preventing corruption and is already working with the MDBs to seek ways in which to harmonise the approach to the disclosure of the agent fees. Agents are already included in the Covenant of Integrity. In addition, the Bank will consider the merits of harmonisation/covergence of procurement processes (to the extent possible) with other IFIs to require the disclosure of (i) previous sanctions of individuals/companies and (ii) representation agreements and the fees payable between bidders and their agents.
83		<i>Bankwatch Network:</i> Like tendering companies, agents should include proof of non-conviction for fraud and corruption.	See above (items 38 and 85)

84	Disclosure of Previous Sanctions	<p><i>Bankwatch Network</i>: At a minimum, the procurement document should require disclosure of previous sanctions of the individual bidders, including affiliated companies. We understand the intention of the EIB to move on a case by case basis in its investigations and eventual sanction, but if it wants to get serious in its anti-corruption fight, the Bank must address the issue of parent companies' responsibility.</p>	<p>Agreed. As a requirement of the Bank's Covenant of Integrity, bidders must disclose details of any conviction involving Prohibited Practice during the previous 5 years. The responsibility of disclosing affiliated and parent companies will be addressed in the review of the debarment procedures (see item 13 et seq ). See also item 85.</p>
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85	Database and Information Exchange	<p><i>Bankwatch Network:</i> we also urge the Bank to set up its own internal database which would benefit from a constant and pro-active exchange of information with other European institutions and with other IFIs.</p>	<p>Agreed in principle - IT systems will be reviewed in order to determine the most effective way for the Bank to maintain its own database of contractors. It is also noted that EU borrowers are not required to inform the Bank of the contractors used or the value of the contracts; in non-EU projects, contractors are recorded by the Bank under the no-objection procedure. For projects outside the EU, the Bank monitors contract activity through the use of its Procurement Table to ensure that the amounts requested by the borrower correspond to contracts to which the Bank has given its non-objection, and do not exceed the value of the overall contract. This information is supported by copies of each contract which are sent to the Bank.</p>
86		<p><i>Bankwatch Network:</i> We also urge EIB to seek further clarification where necessary of the relevant EU law and statutes and make that legal terrain apparent to interested stakeholders.</p>	<p>References to EU law are included in the various policy documents, where applicable.</p>
87		<p><i>Protimos/CRMB:</i> The Uniform Framework agreed between the IFIs provides the basis for the compilation of a data base to which all lending institutions with public responsibilities would contribute relevant information about those to whom money is being lent. This would ensure a mutually effective and co-ordinated approach towards meaningful accountability amongst the global lending community. If such a data-base had been in place, with information passing freely amongst lenders, it is doubtful whether the web of corruption around the Lesotho Highlands Water Project could have been woven so effectively in the first place. Moreover, EIB is uniquely placed, as an institution with standing in both the commercial financial organisations, development financial institutions, and as a member of the Cotonou Agreement, to implement this mutual exchange of information to a far greater level of effectiveness, as it works to combat corruption without compromising its position in any of these sectors.</p>	<p>See item 15. However, in respect of this particular matter attention is also drawn to the fact that there are some legal and practical constraints with recording and sharing such information with third parties.</p>

88		<p><i>Protimos/CRMB:</i> It must be axiomatic, simply as a matter of good banking practice, that EIB collates its own data base of contractors, subject to appropriate EU controls and procedures, if it has not done so already. Such a database will then be available, and eminently useful, in the mutual exchange of information which is prioritised in the IFI's Uniform Framework.</p>	See above (item 88)
89	Obligations to report - government accountability	<p><i>TI:</i> As a preventive measure, in cases where the EIB lends money to governments, the EIB should also require the borrower to make public its receipt and expenditure of the loan to its citizens, and encourage fiscal (procurement, budget/expenditure, taxes) transparency in general. Fiscal transparency is a basic accountability mechanism that can serve to protect EIB funds and the integrity of the countries in which EIB funds are used. This is supported by several anti corruption conventions - UN, African Union, OAS - which already foster greater transparency in how governments are accountable to the public. The fact that there is some information about the projects in the EIB webpage is not enough. Governments should take responsibility in reporting in detail to their citizens on the projects they are implementing and the EIB can play a role in promoting through the loan agreements that they do so.</p>	<p>Agreed although as noted previously, both within the EU and outside the EU, the responsibility for making public its receipts and borrowings lies with the individual governments and is technically outside the Bank's role. Nevertheless, the Bank will review the options available to encourage fiscal transparency among borrowers, in particular requiring the publication of the receipt and expenditure of EIB funds. In the meantime, it is highlighted that the Bank ensures that all lending to Governments goes to an authorised pre-approved bank account. In addition, for projects outside the EU, the Bank monitors that the money is used for the Project financed by requiring the borrower to submit justification in the form of receipted expenditure prior to each disbursement (in certain cases where EIB disburses upfront, ex-post justification is requested), to prepare regular progress reports and usually also requires certification to be made by international consultants.</p>

90	EITI	<p><i>Bankwatch Network:</i> We welcome EIB's interest in joining the Extractive Industries Transparency Initiative (EITI) as a first step to increase payment transparency in multinational companies' operations in developing countries. However, we believe EITI is utterly insufficient unless at the same time borrowers and promoters disclose project agreements – such as Host Government Agreements, Production Sharing Agreements or Power Purchase Agreements – if they wish to justify their secrecy under 'commercial confidentiality' provisions. In particular, clauses often found in these agreements, such as stabilisation clauses, often limit potential developmental benefits of sponsored projects, as well as having serious human rights and environmental and social impacts. The EIB should undertake clear steps in the direction of more transparency of these documents under its new anti-fraud and anti-corruption policy.</p>	<p>This is an important issue for the Bank and in addition to actively considering the possibility of joining the EITI, disclosure of environmental and social impact assessments is covered by the Bank's Public Disclosure Policy and the environmental and social practices handbook.</p>
91	Disclosure of finance contracts	<p><i>Bankwatch Network:</i> We would also reiterate the importance of disclosure of finance contracts between the EIB and the client. Transparency of these contracts would serve the public interest as well as help to clarify the anti-corruption provisions envisaged in the contract agreement between the EIB and the promoter/borrower.</p>	<p>The Bank will publish the standard terms included in the finance contracts concerning fraud and corruption to ensure greater public awareness of EIB terms. As previously noted, the Bank does not object to project promoters, borrowers or other competent parties making information available on their relationship and arrangements with the the Bank, including Finance Contracts (Article 27 of the EIB's Public Disclosure Policy). However, on the basis that confidentiality is necessary in commercial activity, the Bank does not publish specific finance contracts itself. The same Article of the Disclosure Policy states: "Information typically forming part of the Bank's confidential relationship with its business partners includes the financing request by a project promoter, loan pricing information, and the Finance Contract".</p>

92	Global Loans	<p><i>Bankwatch Network</i>: we are not satisfied with the Bank's response that the responsibility for control of global loans is left to the borrower/financial intermediary. We believe the EIB needs to take responsibility for ensuring that the financial intermediary applies strict anti-fraud policies and equally shows zero tolerance for corruption. The current policy does not respond to that issue.</p>	<p>The Bank takes this matter seriously. Control of global loan allocations typically is for the borrower/financial institution whose capacity to do so will have been evaluated by the Bank in the loan appraisal process. However, the Bank receives the justification provided by the financial institution for its disbursements. Also, internal audit and evaluations departments periodically review global loan systems, OCCO performs integrity due diligence and IG/IN investigates any allegations of fraud or corruption.</p>
93	EIB's role in ensuring implementation of anti-bribery conventions	<p><i>Bankwatch Network</i>: We believe EIB's references to various conventions including UNCAC and OECD, though very plausible, are not enough to ensure the conventions are truly operationalised and implemented. The weak Bank response to the comment from Mr. Dunnett gives considerable reason to wonder how genuinely these conventions are considered and implemented by the EIB. We would like to see the policy clearly explain how the conventions will be operationalised and promoted among the Bank's clients.</p>	<p>Agreed. The Bank will review and consider in what ways it can promote the ratification/implementation of international conventions such as the United Nations Convention against Corruption among its clients. When carrying out the relevant integrity due diligence and / or when issuing opinions, OCCO takes into consideration whether the country where a project takes place has concluded these conventions.</p>

94	Cotonou	<p><i>Protimos/CRMB:</i> A question which, as part of the consultation process, remains unanswered, is the degree to which the EIB carries responsibility for the administration and or implementation of funds used outside the EU under the provisions of the Cotonou Agreement. Without a clear definition of EIB's role under the Agreement, (which remains lacking,) there is a real risk for the Bank that a conflict of interest will arise, or that the Bank will find itself unable to account for the integrity of a financial transaction under the Agreement, when it is requested or required to do so.</p>	<p>The Bank recognises the importance of this matter and its role is therefore defined in the Cotonou Agreement and the related legal texts, in particular the Internal Agreement and the Financial Regulation.</p>
95	Certification Agency	<p><i>Protimos/CRMB:</i> Based on (i) Thornburgh's recommendations (report on the World Bank Debarment Process) for a proactive approach to preventing corruption in procurement and (ii) increased accountability of EIB's lending practices but (iii) noting EIB's lack of capacity to meet these expectations, EIB should consider using a dedicated agency for certification of the 'paper trails' which are created during in the procurement process for major projects involving huge sums of money. Benefits include (a) providing increased assurance of the process (ensuring that essential accountability and monitoring occurs), (b) outsourced monitoring minimises EIB's role and reduces criticism of partiality in lending process, (c) providing borrowers whose integrity is unchallengeable a rightful advantage over others who benefit from the successful concealment of corrupt practices, (d) generating a body of information which could be shared amongst MDBs by a mutually accessible database, ensuring funds were not used corruptly, and (e) to organise an initial trial period for a small group of major tenders.</p>	<p>Agreed in principle although according to the Guide to Procurement, it is clear that responsibility lies with the Promoter. The concern is however noted and the Bank's current procedures will be kept under review.</p>
96		<p>Certification processes are widely used in other parts of the commercial world: for example, they are a well established feature of the oil and gas industries. They exist in the form of sophisticated tracking software used by many of those private and commercial banks who are inclined take a necessarily stringent view of the integrity of those to whom they are considering lending, or to those to whom they have lent, but who later provoke misgivings in the Bank. Monitoring is considered to be axiomatic in the commercial banking community, an ongoing requirement of responsible lending.</p>	<p>See above (item 98)</p>

97		<i>Dunnett:</i> One means to show earnestness could be for the Bank to establish an independent certification scheme for major infrastructure projects in countries where corruption is prevalent. The suggestion made by Protimos merits study.	See above (item 98)
98	Dispersed Focus	<i>Dunnett:</i> The Uniform Framework emphasises the struggle against corruption, and secondly fraud. The Bank's paper weakens the focus. While money laundering and terrorist financing are serious crimes bringing adverse economic effects, they are not widely considered an equal priority with corruption and fraud. The Bank, for the sake of political conformity, has given them equal weight. This should be changed, since it sends the wrong message to staff and collaborators.	The Bank considers that money laundering and terrorist financing are serious crimes which can be closely linked to fraud and corruption. The Bank believes that the policy should address issues of money laundering and terrorist financing alongside the Bank's objectives relating to fraud and corruption.
99	Resources	<i>Dunnett:</i> To fulfil its commitments, the Bank will need more human resources. The Inspector General in the consultation meeting stated that he had in his team access to all the resources he needed. That is not sufficient. An effective active policy is carried out not principally in the inspectorate but in the project departments. The policy requires more diligence in the appraisal of projects, supply contracts, national indicators of level of corruption.	The Bank addresses its resource requirements according to the outcome of regular resource requirements analyses.
100	Staff Incentives	<i>Dunnett:</i> The Bank should ensure that, where the stricter diligence entails delay to a project or a loss of productivity of staff members, that this would not adversely affect the annual assessment of the performance of staff and their managers. It should inform staff that they would gain and not lose in esteem of superiors, if they expose corruption, and if they take the time and effort to prevent or discourage it. Conversely, they should know that, if corruption comes to light in a later accounting period for the assessment of staff performance, that their performance might be reassessed ex post. Performance bonuses would reflect these principles. This framework will be credible only if it has the consistent support of the President, the Management Committee and the head of Human Resources.	All staff are subject to the policy and are required to report suspicions of prohibited practices as and when they occur.

101	Disclosure Issues	Dunnett: The policy needs the energy that sunlight brings. Here are some useful measures of transparency:	
102		1. The model Integrity Commitment should be published. It is mentioned in the paper without explanation. Is it part of the finance contract, or is it a separate instrument?	See item 5 about Integrity Commitments. Also see item 94 for further details about disclosure of finance contracts.
103		2. As a more limited measure, the Bank should require that public borrowers publish the Integrity Commitment and related clauses. If they do not, the Bank should publish them itself. It should reserve for itself the right to do so;	See above (Item 94)
104		3. The Bank should reconsider the publication of public-sector finance contracts. Countries that requirement parliamentary approval to public contracts already publish them;	See above (item 92)
105		4. The Bank should publish the Uniform Framework, as have the IBRD and EIB and do more than give a link to an “unpublished document”;	Agreed. The Uniform Framework document is published on EIB's website at : <a href="http://www.eib.org/about/documents/ifi-anti-corruption-task-force-uniform-framework.htm">http://www.eib.org/about/documents/ifi-anti-corruption-task-force-uniform-framework.htm</a>
106		5. The Bank should publicly identify the projects that will be the subject of closer and more diligent scrutiny;	The Bank publishes a list of projects. The Bank is not responsible for identifying to third parties which projects should be the subject of more scrutiny as this in turn could be criticised for trying to unduly influence the opinions of others.
107		6. The Bank should publish an amendment to its Procurement Guide to reflect the principles finally adopted in the revised integrity policy.	Agreed. The Guide to Procurement will be revised and published in due course.

108		<i>Dunnett:</i> The Bank already works with the MDBs. It should also mention that it is observer at the FATF.	The Bank is not an observer at FATF but it is part of the European Commission delegation (the European Commission is a member of the FATF).
	Collaboration/ Exchanging Information	<i>Dunnett:</i> The Bank should:	
109		1. Announce that its may share with co-financiers any information relating to prohibited practices on projects financed in common.	Agreed. The Bank will exchange information under the Uniform Framework subject to any obligation of confidentiality which may apply.
110		2. Announce a policy of cultivating local civil society, especially in the countries and regions where the Bank has opened an office. Approaches of these kinds could boost local efforts to combat corruption and fraud, and could provide channels of information to the Bank. This should be defined in the job descriptions of the heads of the Bank's offices. The same duty would apply, to a lesser extent, to loan officers in countries where corruption is rife.	See above (items 79-80).
111		3. Cooperate with judicial and other authorities in the member states, as provided by the Uniform Framework. Is it enough to leave that task to OLAF, where there are especial issues relating to national procurement, not directly affecting the sphere of OLAF, namely the Communities' financial interests?	This is an important issue for the Bank and indeed the Bank cooperates with national authorities directly and/or with assistance from OLAF as appropriate on a case-by-case basis.
112		4. The Bank should collaborate with fellow investors. This applies also to the EIF	Agreed. The Bank, including EIF, do already cooperate with IFIs co-investing in the same project.
113		5. Both the EIB and the EIF should, where they appoint nominee directors to the boards of their investments, ensure that the nominees receive training in governance and control of business ethics. It should be their duty to seek to ensure that the companies on whose boards they sit introduce formal and effective policies.	This is recognised as important and Board members nominated by the EIB are expected as part of their normal management function to have appropriate skills (or training as necessary) and experience to carry out appropriate due diligence in order to ensure that sufficient control mechanisms are in place.

114		6. Following the pattern of the IBRD, the Banks should allow greater external supervision. For instance, the Inspector General should be subject to an external oversight board. The Bank's audit committee may not be the best vehicle for this task	Agreed and as noted in the Investigation Procedures, IG reports the findings of investigation cases to the President of the Bank, the Vice-President responsible for investigations, the Vice-President responsible for the affected business area, the Secretary General, the Audit Committee (see [i] below) and OLAF. In these ways, the Bank presents a strong governance structure in terms of management accountability and independent supervision and control. ([i] The Audit Committee is an independent control body appointed by and answerable directly to the Board of Governors, and responsible for verifying that the operations of the Bank and its books have been kept in a proper manner).
115		7. Finally, the scope for an external certification process for large and complex infrastructure projects in spheres more susceptible to the bane of fraud and corruption should be examined.	See above (item 98)
116	<i>Specific Drafting Proposals (Draft II paras)</i>	<i>Dunnett:</i> Proposed specific changes to the text of the Policy:	

117	Para 5	Is it enough for the Bank to be cognisant of the principles of these international documents. Especially in the case of item (iv) the Bank is directly committed to them.	Noted. The current wording will be retained although further consideration will be given to this comment in due course.
118	Para 7	The word "appropriate" or its derivatives appears twelve times in the course of the policy. One might suspect that the word is a cloak for an incomplete analysis on certain points. Perhaps the Bank could work to define more precisely its intention. This would certainly give more force and clarity to the policy.	Agreed. The text has been reviewed and amended.
119		Reports are to be made of evidence or suspicion of prohibited practices, not just of the practices themselves. Align with §22 and §28.	Agreed in principle although the current wording will be retained - further consideration will be given to this comment in due course.
120	Para 8	May be better to delete from the third line the words "Relations between the EIB and..."	Agreed. The text has been amended.
121	Para 9	Provide also for a definition of "obstructive practice" as does the IBRD.	See above (item 46).
122		Consider aligning the Integrity Covenant on these definitions	See above (items 39-46)
123	Para 9.e, note 4	There is some confusion between directives and regulations	Agreed. Text amended to "Other EC legislation"
124	10(i)	Repeats §2	Noted.
125	10(ii)	The directives apply only to the EU. That should be clarified	Noted. The current wording will be retained although further consideration will be given to this comment in due course.
126	12.i	Please explain the Integrity Commitment	See first matrix and above (item 105).
127	12.iii	after "complaint" add "or admission"	Noted. The current wording will be retained although further consideration will be given to this comment in due course.

128	12	Add "(viii) Publish Integrity Commitments" (if not entire finance contracts)	Noted. The current wording will be retained although further consideration will be given to this comment in due course.
129	12.b.i	Only EU borrowers warrant compliance with EC Directives	Agreed. The text has been amended.
130	12.b.ii	Update to latest EU norms, if needed, as proposed by one CSO	Agreed. The Bank continually updates its contract clauses to take account of EU norms and best practice.
131	13(iii)	Elaborate this exclusion policy along the lines suggested above.	See above (items 13 and 46).
132	Note 1	The note should state that the bank will also work with other MDBs on a reciprocal exclusion scheme.	Agreed. The text will be updated once the debarment system is in place.
133	Para 14	This statement is at odds with the bank's Procurement Guide. The goal is not fair tendering but economic and efficient tendering. The declaration of aims should be aligned.	The declaration of aims will be reviewed. However, it is noted that fairness is one of the basic principles of the EC public procurement law.
134		More importantly, the bank's aim is not limited to promoters "in the EU who fall under the Community Directives". It applies universally. It also applies to private EU promoters, even though they are not covered by EU Directives on procurement.	Agreed. The text has been amended.
135	Para 15	The reference is to prohibited practices relating to the contract in question, not to all prohibited practices.	Noted. The current wording will be retained although further consideration will be given to this comment in due course.
136		Extend the concept of Integrity Covenant to EU projects and generally as proposed above in this paper.	See above (item 47)
137	Para 16	The sanctions available to the bank presuppose that a debarment list is already in place. The reference is perhaps intended to be to procurement on the project in question, not to any procurement process. It should be clarified	The sanctions are currently available and do not presuppose that a debarment list is in place. The debarment procedure is currently under review - see items 13-20 above.
138	Para 17	Internal divisions of responsibility are of no public concern, except that the public should know to whom to address their reports and complaints	Noted. The current wording will be retained although further consideration will be given to this comment in due course.
139	Para 20	Perhaps "monitored jurisdiction" should be defined. One CS suggested extending the monitoring to certain kinds of project and classes of promoter worldwide	Agreed. A footnote has been added: "all such jurisdictions that are blacklisted or judged to be weakly-regulated by the IMF, FSF, FATF or OECD".
140	Para 23	There is no equivalence of protection within and outside the EU. The paper should align practices in all regions. If it does not, it should make it clear which apply within and which apply without. Differences of treatment should be based on objective criteria for differences in the need for due diligence and controls	See above (item 47)
141	Para 23.b	Add "or admission" after "complaint"	Noted. The current wording will be retained although further consideration will be given to this comment in due course.

142	Para 25	The procedure, as here stated, is confused. The person filing a complaint should have one point of contact. Normally that contact should not be changed. If the initial contact point passes on the complaint to another department, any acknowledgement and any change of contact point, should be communicated to the complainant by the Investigations Contact Point, and not by the department whose activity is the subject of the complaint	Agreed. The text has been reviewed and amended to clarify.
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143	Part VII	In footnote 15 there is perhaps confusion between the strict legal position and the current practice of OLAF. OLAF's involvement is not necessarily limited to cases of misuse of EU funds. The ECJ judgement in case C-15/00 (the OLAF case stated that, because the bank is a body closely associated with the EU, any matter affecting its financial interests could affect the Community's financial interests. Consequently, except where the independent and effectiveness of the Bank would be impaired thereby, the OLAF would be competent to examine misuse of EIB funds. Money laundering is likely to involve misuse of funds, since, if the funds are correctly applied to an approved project, there cannot be money laundering. Conversely, money laundering implies a misuse of the project loan funds. See ECJ case C-15/00. See also the advocate-general's opinion in that case.	Agreed. The footnote has been replaced with by the following text: "This section sets out the procedures for investigations of prohibited practices, which are handled by the Inspector General's Department. Allegations concerning AML/CFT issues will be handled by the Office of the Chief Compliance Officer in an analogous way. The principles of independence, professional standards, access to information, confidentiality, and the rights of staff will apply equally in the investigation of AML/CFT cases." Also the paragraph in Reporting Procedure has been amended accordingly.
144	Review and Updating of Policy (Paras 46 and 47)	Dunnett: The Bank has much to do to give teeth and credibility to its policy. There should be constant review. The Bank could do more to show that, as a body, its management shares the belief that the prevention of corruption and fraud is integral to the Bank's mission.	See above (items 76-77)
	<b>ANNEX 1</b>	<b>Arts 93-96 of the Financial Regulation (as cited by Protimos)</b>	
		(i) Article 93 of the Regulation sets out the classes of contractors/tenderers/candidates who shall be excluded from participation in the procurement procedure. Each of these six classes describes ex post facto reasons to exclude the contractor from the procurement process: bankruptcy, conviction of an offence concerning their professional conduct, or guilty of the same offence in any event, failure to fulfil obligations concerning tax or social security contributions, a judgment against the contractor for fraud etc, or 'serious' breach of contract for failure to comply with contractual obligations in another procurement procedure.	
		(ii) Article 94 rules that candidates or tenderers may not be awarded contracts where they are subject to a conflict of interest, or where they misrepresent information supplied during the process of participating in the contracts procedure, or fail to supply such information	

		(iii) Article 95 requires each institution to set up a database containing full information concerning those who fall into the categories set out in Articles 93 and 94, and for there to be mutual disclosure between such institutions	
		(iv) Article 96 sets out a power under which the contracting authority may impose administrative or financial penalties which may be imposed upon those who are excluded through the provisions of Articles 93 and 94	
<b>INVESTIGATIVE PROCEDURES</b>			
145	Decision to Open a Case (Para 12)	<i>Luis Socorro</i> : there is a typo in paragraph 12, and it should include he/she.	Agreed. The text has been amended.
146	Electronic Data Paras 18-19	<i>Luis Socorro</i> : Unless otherwise stated in an applicable policy/regulation, it should be understood that all EIB IT systems are the property of the EIB and therefore subject to any procedure to preserve and obtain the electronic data. It is not clear why the procedure to gather electronic data from such property should need the approval of the director of HR. Could you please clarify if the data subject to this approval is related to "personal data", in which case obtaining such data is subject to national jurisdiction and not to the EIB procedure.	EIB, as a Community Body, is subject to the prescriptions of EC Regulation 45/2001 on the protection of individuals with regard to the processing of personal data. In this context, the procedure in place to gather electronic data complies, amongst other things, with the rules governing the access to personal data provided for in the aforementioned Regulation and notably those regarding the possible remedies

147		<p><i>Luis Socorro:</i> If the procedure to obtain electronic data from EIB IT systems needs to be performed in the field, such prior approval from the Director of HR (I assume he/she is based in HQ) may impede the investigator from preserving the data and could delay the entire process and/or jeopardize the evidence. This prior approval by the Director of HR may need to be revisited in the policy.</p>	<p>The concern is noted. However, most of the staff are based at HQ. Also all data relating to transactions or e-mails are processed by HQ IT systems and therefore available centrally. The approach may be revised in future in light of experience.</p>
148	<p>Information from Witnesses Para 21</p>	<p><i>Luis Socorro:</i> There is no distinction between witnesses and subjects of an investigation in this section. It seems that the procedure treats them equally. For procedural and legal purposes, the information obtained from a witness and that of a subject of an investigation have a different context. I assume that you have indicated in paragraph 21 (b) –it may be a typo and should be (c)-, that the discretion to give access to the written record of the interview was based on the provisions of paragraph 25 (a, b). Although it may be your call, this provision may be in contravention to due process and may create future conflicts if the investigation findings are challenged. As a best practice, any written record of a suspect's interview should be available at any stage of the process. On the other hand, the provisions of paragraph 25 (a) may be seen a biased if the findings of the investigation are challenged by the subject of an investigation. This characterization of a subject may need to be revisited in the policy.</p>	<p>Typo will be changed - second b. changed to c.</p> <p>To avoid doubt, we have (1) changed the title "Information from Witnesses" to "Information from Interviews"; and (2) change the first line to read "As regards all interviews conducted by IG/IN, both within and outside EIB, including interviews of the subject of an investigation."</p>