

For Public Consultation - 12 February 2007

Procedures for the Conduct of Investigations by the Inspectorate General of the EIB

Introduction

1. This document sets out the “Procedures for the Conduct of Investigations” by the Investigation unit of the Inspectorate General (IG/IN) of the European Investment Bank (EIB).
2. The procedures shall be updated from time to time based on:
 - a. A public consultation process to be held in 2007;
 - b. Changes to the "Policy and Guidelines on Fighting Corruption, Fraud, Money Laundering and the Financing of Terrorism”;
 - c. The evolution of best practices; and
 - d. The experiences gained in implementing the procedures.
3. The Procedures set forth herein:
 - a. Apply to all investigations conducted by IG/IN within the EIB and its operations;
 - b. Are to be read in conjunction with the “Policy and Guidelines on Fighting Corruption, Fraud, Money Laundering and the Financing of Terrorism”;
 - c. Are applicable to the EIF with provisions made for its separate Governance structure.

Receipt of an allegation

4. IG/IN shall accept reports of suspected corruption, fraud, money laundering or the financing of terrorism from any source within or outside the EIB, and shall respond to all such reports as set forth below.
5. If feasible, IG/IN shall interview or otherwise contact the complainant and obtain as much relevant information as possible, including:
 - a. A complete description of the alleged wrongdoing;
 - b. The alleged connection to the EIB’s financing or other activities;
 - c. The names and locations of the persons or entities involved;
 - d. The approximate dates or time frame of the transactions;
 - e. An estimate of the amount of EIB or project funds at risk;
 - f. The location and description of any potentially relevant documents, data or records;
 - g. The names and locations of other persons who may have information regarding the alleged misconduct and be willing to provide it to IG/IN;
 - h. The basis for the complainant’s knowledge;
 - i. The complainant’s motive to report; and
 - j. Any concerns of the complainant regarding possible reprisals or personal security.

6. If the complainant insists on anonymity, IG/IN shall request that he or she re-contact IG/IN at an agreed date and time for further questions based on the results of the initial inquiry.
7. IG/IN shall promptly make a record of the information provided and enter the essential information into the IG/IN case management system.

“Essential information” shall include:

- a. The name of the IG/IN staff member who handled the complaint;
- b. The date and method of contact with the complainant;
- c. The identity of the complainant, if disclosed;
- d. A brief summary of the allegations, including the type of wrongdoing alleged (e.g., product substitution, bid rigging, etc.) and the parties involved;
- e. The alleged connection to the EIB, if any, including the description and location of the project or operation involved; and
- f. Any other information that the IG/IN staff member considers significant.

Evaluation of an allegation

8. After receipt of a complaint, IG/IN shall:
 - a. Confirm that the alleged wrongdoing involves an EIB-financed operation or member of staff, and if so;
 - b. Determine whether:
 - i. The alleged misconduct represents either a sufficient material risk¹ to the EIB or is of sufficient public interest to justify an investigation; and
 - ii. An investigation is feasible, based on the age of the reported transactions, the specificity of the information received, and the availability of necessary records or witnesses; and
 - c. If the above criteria are met, IG/IN shall objectively evaluate the reliability of the complaint. This may involve, among other steps, reference to:
 - i. EIB project, financing, or other documents and files data;
 - ii. Prior complaints involving the suspected parties received by the EIB or OLAF; and
 - iii. Background checks of business and media databases and other sources of information.

Decision whether to open a case

9. The Head of IG/IN shall decide whether to open a case based on the above evaluation.
10. If the Head of IG/IN decides to not open a case, he shall:
 - a. Promptly record the decision in the IG/IN case management system;
 - b. Make the information regarding the allegation and its evaluation available upon request to appropriate parties, including the President and the Vice President responsible for investigations, the Secretary General, the Audit Committee, OLAF and the external auditors; and
 - c. Include the number of cases evaluated but not opened in the IG’s “Annual Review of Fraud Investigations” submitted to the Management Committee, the Audit Committee, OLAF and the external auditors.

¹ Factors to be considered include the reputational, operational and financial risk to the EIB and its operations.

11. If the Head of IG/IN decides to open a case, he shall:
 - a. Promptly record the decision in the case management system;
 - b. Assign a case tracking number to the complaint; and
 - c. Prepare an initial investigative plan. The plan shall include the IG/IN personnel to be assigned and an assessment of the time and resources needed to complete the investigation.
12. After the decision to open an allegation IG/IN shall promptly notify the European Anti-Fraud Office (OLAF) and provide it with the necessary information it needs which will be done according to their regulation 1073/99. http://eur-lex.europa.eu/LexUriServ/site/en/oj/1999/l_136/l_13619990531en00010007.pdf
13. OLAF may, at the invitation of IG/IN or on its own initiative, participate in or take the lead in any investigation including those inside the EIB.

Purpose of an investigation

14. The first step of an investigation is to determine the veracity of allegations or suspicions of alleged wrongdoing affecting EIB operations or involving members of staff.

Sources of information

15. Sources of information for an investigation shall include, but not be limited to:
 - a. Documents of any type;
 - b. Electronic data;
 - c. The results of inspections and tests; and
 - d. Statements of witnesses, including the subject of the investigation.

Documents

16. With regard to documents that may be submitted as evidence in an administrative or other legal proceeding, IG/IN shall:
 - a. Attempt to identify and use the original document or, if the original is not reasonably available, reliable copies;
 - b. Carefully file and keep all documents in the condition they were received; and
 - c. Be able to identify when and where the document was obtained, by whom and from whom.

Electronic data

17. With regard to electronic data, IG/IN shall:
 - a. Obtain such data:
 - i. From the most reliable source reasonably available; i.e., the location or facility that maintains the most complete, accurate and current data;
 - ii. In a manner that protects its integrity, and which ensures that the data has not been altered, tampered with or corrupted in any manner; and
 - b. Be able to identify when, where and how the data was obtained, by whom and from whom.

18. With the approval of the Director of the Department of Human Resources, and in accordance with applicable laws, rules regulations, policies and procedures, IG/IN may access and copy potentially relevant electronic data and email created, copied or received by an EIB member of staff on the EIB IT system.

Inspections and tests

19. IG/IN may:
 - a. Conduct on-site inspections of any works, structure, facility or other property relevant to an investigation, and record the results photographically or otherwise; and
 - b. When deemed advisable, obtain the assistance of subject matter experts from other departments of the EIB or from outside firms.

Statements of witnesses

20. The following procedures shall apply to all interviews, within and outside the EIB, including interviews of the subject of an investigation:
 - a. Interviews shall be conducted:
 - i. In the language in which the witness and investigator are fluent, or otherwise with the assistance of an interpreter; and
 - ii. By two investigators, if IG/IN deems advisable.
 - b. IG/IN shall promptly prepare a written record of the interview;
 - c. IG/IN, may in its discretion, provide a copy of the record of interview for the witness to review, or to review and sign; and
 - d. Interviews may be recorded electronically, with the knowledge and permission of the witness.

Confidentiality

21. If IG/IN deems it to be in the interest of the EIB, it may agree to grant a witness confidentiality to facilitate his or her cooperation and to protect the witness from reprisals.

IG/IN missions

22. As part of an investigation, IG/IN may organise a mission to:
 - a. Review documentation kept by borrowers, promoters, contractors, consultants, suppliers and third parties, according to the provisions of the EIB finance contract involved and the EIB Guide to Procurement;
 - b. Conduct on-site inspections;
 - c. Interview witnesses; and
 - d. Consult other parties doing investigations or audits of the subject project or operation.
23. Upon completion of a mission, IG/IN shall prepare promptly a record of mission activity.

Findings

24. The findings of an investigation shall be based on:
 - a. The most reliable factual information available, and reasonable inferences and conclusions drawn from established facts;

- b. To the extent feasible, documents, electronic data, or tests and inspection results that have been authenticated as accurate by their authors, recipients, or custodians, or by other persons with direct knowledge of their authenticity;
 - c. To the extent feasible, statements from witnesses who have direct knowledge of the facts and circumstances in issue;
 - d. Information that has been corroborated to the extent possible by other reliable sources, including other witnesses, documents or data; and
 - e. Credible exculpatory as well as inculpatory information.
25. Investigative findings may include IG/IN's:
- a. Comments on the perceived credibility and behaviour of a witness, including the subject of the investigation; and
 - b. Recommendations for the appropriate action to address the issues under investigation.

Standard of proof

26. The standard of proof that shall be used to determine whether a complaint is substantiated shall be whether the information, taken as a whole, shows that an investigative finding is more likely than not.

Concluding an investigation

27. If, after reasonable investigation, IG/IN determines that there is not sufficient credible information to substantiate a complaint, it shall document the findings in a note to file and close the case.
28. IG/IN may re-open a case that has been closed if credible new information is received or if warranted by other circumstances.
29. IG/IN determines that there is sufficient credible information to substantiate a complaint, he shall document the findings in a note to file and refer the case to the relevant authorities within or outside the EIB for appropriate action.
30. The IG/IN shall distribute the note to file for all unsubstantiated and substantiated cases simultaneously to the President and the Vice President in charge of investigations, the Vice President in charge of the affected business area, the Secretary General, the Audit Committee, OLAF and the external auditors.

Obstruction of an investigation

31. If the investigative findings indicate that a member of staff:
- a. Made a knowingly false statement to IG/IN in a complaint or during the course of an investigation, or
 - b. Failed to comply with his or her obligation to cooperate in an investigation, as required by the EIB Staff Code of Conduct and the "Guidelines on Fighting Corruption, Fraud, Money Laundering and the Financing of Terrorism," or
 - c. Otherwise attempted to hinder, impede or obstruct the investigation,
- IG/IN shall refer the matter to Department of Human Resources for appropriate action.

32. All documentation and information for opened and unopened, substantiated and unsubstantiated cases shall be kept in a secure and confidential manner and shall be retained for at least five years.

Other matters

33. IG/IN shall submit a status report of all cases in which at least an initial evaluation was done ten times annually to the Audit Committee, the External Auditors, OLAF, the President and Vice Presidents concerned. This report shall be submitted at least five times annually to the Management Committee.
34. IG/IN will not pay a witness for information. It may pay or reimburse reasonable expenses incurred by a witness as the result of his or her cooperation with IG/IN.
35. IG/IN may seek the advice or assistance of other departments, and may engage outside consultants and subject matter experts to assist it in an investigation.
36. All investigations by IG/IN are administrative in nature.
