

**MATRIX OF ISSUES RAISED DURING THE
FIRST ROUND OF PUBLIC CONSULTATION**

<i>Item no.</i>	<i>Topic - References are to paras in the first draft of the policy (with amended policy para in brackets)</i>	<i>Stakeholder proposal</i>	<i>Comments/Proposal from the Review Panel</i>
1.	<p>Preamble and Basic Principles Paras 1-3 (amended policy paras 1-7)</p>	<p><i>Dunnett:</i> The Bank should define and give reasons for the policy. The policy statement should also address:</p> <ul style="list-style-type: none"> • the mischief to be addressed; • the Bank’s reason to hope to make progress against it; • a measure of the size of the problem; • the Bank’s baseline assessment; • a proposal for a criterion of success; • a target and a timescale; • a provision for independent evaluation 	<p>The Preamble has been expanded to include references to the following:</p> <ul style="list-style-type: none"> ➤ Treaty of Rome ➤ EIB Statute ➤ EU law ➤ IFI Uniform Framework ➤ OECD and UNCAC ➤ The work of FATF <p>Although materiality of the problem is an important issue, it is not one appropriate for inclusion in the policy - Annual Report of Investigations (to be posted on the Bank’s website) will reflect this point.</p>

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<p>2.</p>		<p><i>Dunnnett:</i> Reference should also be made to the scale of corruption currently faced in EIB-financed projects such as:</p> <ul style="list-style-type: none"> • Impressions of members of staff gleaned from their business contacts; • Frequency with which the Bank declines projects, whether at an early or late stage, on the grounds of overt or suspected corruption; • Incidence of allegations of corruption that the Bank’s Inspector-General receives under the current EIB Guidelines, number and scale of investigations his office has conducted, and their outcome; • Frequency of public allegations of corruption on EIB-financed projects that are not manifestly unfounded; • Spread of projects by sectors more or less susceptible to corruption; • Reports from national agencies, if any; • Advice of local civil society; • Transparency International’s index rating 	<p>See Item 1 – while these topics may be of interest, the level of detail proposed is not required for the policy. The Annual Report of Investigations to be posted on the Bank’s website will reflect a number of these points. In addition, some of the broader issues are also covered in the Bank’s Corporate Responsibility Report.</p>
<p>3.</p>		<p><i>Dunnnett:</i> The paper should state how many referrals the Bank has made to OLAF, and how many investigations OLAF has conducted on EIB loans and investments, and their outcome</p>	<p>The number of referrals is a reporting issue, rather than an issue for inclusion in policy. See Item 2.</p>

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4.		<i>Dunnett:</i> The Bank should expressly anchor the policy in the Bank’s mission, in its Treaty obligations and as integral part of the Community apparatus.	See Item 1. This and other comments were noted and the Preamble has been expanded to include references to the following: <ul style="list-style-type: none"> ➤ Treaty of Rome ➤ EIB Statute ➤ EU law ➤ IFI Uniform Framework ➤ OECD and UNCAC ➤ The work of FATF
5.		<i>Dunnett:</i> The policy should recognise the challenge to balance the Bank’s immediate development goal of financing investment with the international long-term development goal of eradicating corruption, that these goals may conflict and that the Bank may have to make choices. The policy should state how staff should resolve those choices	The question of making choices cannot be adopted since it would violate the principle that EIB will not tolerate “prohibited practices, money laundering or terrorist financing” in any of its activities or operations.
6.		<i>Dunnett:</i> the paper should be both a public policy statement and a manual to staff. It should therefore contain instructions to staff. While the code of conduct concerns action once corruption is suspected, the instructions would cover means to impede and prevent corruption	We agree that the policy should clearly state the Bank’s public position concerning prohibited practices, money laundering and terrorist financing – more detailed information such as instructions to staff can be covered by training, information provided on EIB’s intranet site, written instructions to staff etc.
7.		<i>Protimos:</i> This is a fantastic opportunity for the Bank to take the lead in combating fraud and corruption, an area which has previously been characterised by compromise and organisations merely “making the right noises.”	The EIB will take an active role in pursuing its zero tolerance policy and 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.

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8.	Definitions paras 6-7 (amended policy para 9)	<i>TI:</i> To ensure consistency, it would be advisable that the policy refers to all four areas of its scope throughout the document. At present, different terms are applied in different situations but this can result in loopholes in the policy application and interpretation.	The text has been clarified throughout the policy and procedures defining “prohibited practices” as including fraud, corruption, collusion and coercion.
9.	Measures to Minimise Fraud and Other Illegal Acts (amended policy paras 10-11)	<i>Dunnett:</i> limit EIB loan to cover fair project costs (i.e., project price that it estimates would apply under fair competition) as assessed by an EIB expert.	The EIB already has controls in place concerning the cost of a project. In particular, cost estimates are reviewed by the Bank at time of loan proposal and during no-objection process outside EU.
10.		<i>OLAF:</i> there is a distinction made between projects the EIB finances in the EU, for which a close cooperation with OLAF is indicated, and on the other hand, projects financed outside the EU for which there is no mention of OLAF whatsoever. We would like to understand this distinction.	There is no difference concerning OLAF’s involvement and this has been clarified in the Policy.
11.		<i>OLAF:</i> would it be possible to align OLAF’s investigative powers with the control exercised by the Court of Auditors namely relating to all projects attracting Community grant aid or assistance (including a guarantee from the Community budget)?	The EIB will work in full cooperation with OLAF, whose investigative powers are governed by the relevant Community regulations.

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<p>12.</p>	<p>- Measures through finance contracts para 9 (amended policy para 12)</p>	<p><i>TI:</i> We advise the EIB to consider preventive measures to be applied to all activities in all countries, and not just outside the EU. Even countries with solid institutions and judicial systems have not always prevented corruption.</p>	<p>Within the EU, Member States are obliged to transpose the EC directives into national legislation and it is the responsibility of the Commission to ensure that each Member State undertakes satisfactory transposition.</p> <p>With specific reference to procurement and remedies, there are EC directives such as 2004/17, 2004/18 and 89/665 and 92/13. Consequently, for projects within the EU, the Bank's intervention is to assess whether the promoter is subject to the EC Directives and to the extent necessary to verify compliance with applicable EU legislation in order to ensure rational use of the Bank's funds in the interest of the Community.</p> <p>Another example is the role of banking supervisors in the area of anti-money laundering.</p> <p>For projects outside the EU, the EIB has implemented a number of significant measures to ensure that equivalent standards of protection and measures to combat prohibited practices exist as within the EU.</p>
<p>13.</p>		<p><i>TI:</i> Further elaboration is required on the proposal to require borrowers/promoters to provide integrity commitments to ensure that the highest possible standards are applied. We urge EIB to take the requirement of integrity commitments one step further and demand that partners/bidders prove they have an actual active anti-bribery program in place.</p>	<p>The Bank evaluates the borrower associated with each new loan in terms of governance, capability etc. This is part of the Bank's approach to due diligence and "know your customer".</p> <p>The EIB agrees it should develop an active anti-bribery programme which should form part of the appraisal process.</p>

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<p>14.</p>	<p><i>Dunnett:</i> Non-EU Borrowers should be required to</p> <p>(A) Provide civil immunity and protection to a project-related bribery whistleblower; (counterpart of point 23 of the Bank’s policy statement);</p> <p>(B) Undertake, upon the project financiers’ request, to waive civil claims against a self-confessed bribe-taker, if his confession helps convict the bribe giver;</p> <p>(C) Write, maintain and revise its anti-corruption code to standard best relevant practice;</p> <p>(D) For a mining or hydrocarbon project, subscribe to the Extractive Industries Transparency Initiative (EITI) and encourage government to subscribe, thus ensuring that all royalties and other revenues from mineral exploitation are published and flow of funds is declared.</p> <p>(E) In case of suspected corruption, consider terminating, and/or recovering damages from, a corrupt contractor and calling its integrity bond, and convey to the Bank the reason for its decision.</p> <p>(F) To enforce the covenants listed in section 2 and proposed in this section 3 by novel means. Since the ultimate means of enforcement, namely to call default, is rarely credible unless the creditor’s financial interest is at stake, it is reasonable to explore alternative remedies, such as the imposition</p>	<p>The issues raised as (A) - (C) are not within EIB's role.</p> <p>(D) The Bank is actively considering the possibility of joining the EITI.</p> <p>(E) Damages are a very complex issue and the risk of litigation could be very high. It is for the Borrower not the Bank to decide to terminate the contract. Integrity bonds would be expensive for a bidder to obtain and complicated to administer (for example who would decide whether the bond should be called in and based on what standard and burden of proof), forcing up the costs of projects.</p> <p>(F) The Bank is not in favour of charging additional fees in case of default of such a covenant. The Bank ensures that the cost of monitoring is covered by its margin.</p>
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		of a fee to cover the additional monitoring and administration that may result from a breach of covenant that addresses integrity.	
15.	- Sanctions available to the Bank para 10 (amended policy para 13)	<p><i>Dunnnett:</i> extend the policy (provisions in the Guide to Procurement and model finance contract) to major EU projects (see para 2 on page 3 of submission). Promoter to:</p> <ul style="list-style-type: none"> (a) obtain integrity covenant from contractor (b) nominate point of contact on integrity matters (c) report suspicions to EIB (d) investigate/stop corruption at EIB's request (e) facilitate and fund an EIB investigation (f) inform EIB of measures to recover damages (g) project papers to be retained for inspection for 6 years 	<p>The difference of approach stems from EIB's reliance on rules that are applicable at Community level and translated into national law. Within the EU, Member States are obliged to transpose the EC directives into national legislation and it is the responsibility of the Commission to ensure that each Member State undertakes satisfactory transposition.</p> <p>With specific reference to procurement and remedies, there are EC directives such as 2004/17, 2004/18 and 89/665 and 92/13. Consequently, for projects within the EU, the Bank limits its intervention to assessing whether the promoter is subject to the EC Directives and to the extent necessary verify compliance with applicable EU legislation in order to ensure rational use of the Bank's funds in the interest of the Community.</p> <p>Another example is the role of banking supervisors in the area of anti-money laundering.</p> <p>For projects outside the EU, the EIB has implemented a number of significant measures to ensure that equivalent standards of protection and measures to combat prohibited practices exist as within the EU.</p>
16.		<i>Dunnnett:</i> Para 10 incorrectly includes terrorist financing among the offences listed in Article 45 of Directive 2004/18.	The language has been clarified - CTF was added to the list by Directives 2005/60 and 2006/70.

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17.	- EIB Guide to Procurement paras 11-12 (amended policy paras 14-15)	<i>Protimos:</i> what is the legal status of the Covenant of Integrity? What are the consequences for a breach?	The Covenant of Integrity is a commitment from a bidder to the promoter as part of the bidding process. It would form 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 need to be dealt with in accordance with national law.
18.		<i>Dunnett:</i> An easing of the burden/standard of proof is critical to make corruption in EIB projects more readily detectable and action against it more worthwhile – evidence in such cases rarely leads to a criminal conviction	Using different standards of proof would be problematic for the Bank and we should rely only on criminal convictions
19.		<p><i>Dunnett:</i> strengthen integrity in EIB projects by amending the Guide to Procurement:</p> <p>(a) continuing obligation on contractor to disclose sanctions imposed against it, its officers or directors for corruption or legal proceedings commenced with that aim</p> <p>(b) posting of integrity bond, amount depending on contractors record and governance reforms;</p> <p>(c) sanctions for breach of integrity to include contract termination, liability to pay damages, different standards of proof based on audited a/c measures (“no reasonable doubt” or “balance of probabilities”)</p> <p>(d) retention of tender documents</p>	<p>(a) The Bank will evaluate the implication This would go beyond EIB’s role.</p> <p>(b) It is unlikely that integrity bonds would be justified in terms of cost or additional administration.</p> <p>(c) tender documents and subsequent contract will govern the consequences for breach of integrity - see item 29</p> <p>(d) Documents should be preserved in accordance with the applicable law but in any case at least six years from the date of substantial performance of the contract</p>

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		<p>(e) encourage use of e-procurement</p> <p>(f) contract splitting (even if this raises the overall cost of the work) and price benchmarking;</p> <p>(g) permit promoters to debar convicted fraudsters (see below) under Art 45 of the EU Public Procurement Directive 2004/18</p>	<p>(e) e-procurement can provide efficiencies and cost savings especially in the procurement of homogeneous goods (e.g. furniture, computer equipment). As a means to prevent fraud and corruption, there are benefits though there is a lack of international standards for digital signatures and securities as well as encryption issues. As part of the MDB harmonisation process a working group for e-Government Procurement was set up in 2003 and is led by IDB. The group is currently developing guidelines. EIB will also consider developments in the EU</p> <p>(f) Providing it does not prevent genuine competition, contract splitting could be foreseen in some circumstances but it is not generally considered to be an appropriate tool to prevent fraud and corruption.</p> <p>(g) the Guide to Procurement follows the principles in the EU procurement directive.</p>
<p>20.</p>		<p><i>Bankwatch group:</i> The inclusion of integrity commitments by the borrower/promoter as contractual clauses fully covenanted in the finance contracts by EIB is a positive step. We urge EIB to take a proactive stand in monitoring adherence to these commitments. The current draft of the policy does not specify which monitoring mechanisms are in place to do this.</p>	<p>As part its procurement due diligence during the project implementation period, the Bank ensures that the open, competitive and transparent procedures are adopted by the borrower/promoter in the tendering, selection and award of contracts. This is monitored, outside the EU, during the ex-ante approval process for contract award and through project conditions requiring technical assistance to support the promoter during the tender and implementation phases where appropriate.</p> <p>The Finance Contract includes a representation on integrity by the borrower/promoter.</p>

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<p>21.</p>		<p><i>Bankwatch group:</i> EIB does not make the clauses included in its finance contracts public. We strongly recommend that at least the integrity commitments be made public – any lack of transparency around these agreements prevents the involvement of local civil society, which has proved to be a key actor in supporting the anti-corruption fight in the context of IFI-backed operations.</p>	<p>The integrity commitment mentioned in para 9(i) 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 of the following acts and that it will not commit, and no person, with its consent or prior knowledge, will commit any such act, that is to say:</p> <p>(i) the offering, giving, receiving or soliciting of any improper advantage to influence the action of a person holding a public office or function or a director or employee of a public authority or public enterprise or a director or official of a public international organisation in connection with any procurement process or in the execution of any contract in connection with the project ; or</p> <p>(ii) any act which improperly influences or aims improperly to influence the procurement process or the implementation of the project to the detriment of the Borrower, including collusion between tenderers.</p> <p>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 act.</p> <p>For future contracts, this commitment will be updated in line with definitions in this policy.</p> <p>The above integrity commitment will be reflected in the Bank’s website relating to the work of IG/IN.</p>
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22.	- Sanctions available to the Bank para 13 (amended policy para 16)	<i>Protimos</i> : what does “using all legal means” in the recovery of funds really mean?	The use of "legal steps" by EIB in the recovery of misapplied funds is now qualified by the word “appropriate” – see Para 13(ii) of the amended policy
23.		<i>Bankwatch group</i> : It should be mandatory that the Bank and the promoter will automatically suspend any decision on awarding a contract if the investigation unit is evaluating an allegation or if an investigation has been opened on the case.	Outside the EU, the Bank evaluates on a case by case basis whether a suspension of contract award is appropriate. An automatic contract suspension could lead to paralysis of projects based on mischievous allegations.

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24.		<i>Bankwatch group:</i> The draft policy does not specify which measures EIB will take to recover funds when it is proved that misuse or fraud or corruption took place in project operations.	See Item 22.
25.	Anti-Fraud measures that apply to EIB members of staff	<i>TI:</i> The policy should go one-step further and incorporate preventive measures applicable to all staff such as:	
26.		- the establishment of an asset disclosure provision for its senior officials and	In accordance with Article 4 of the Code of Conduct for the members of the Board of Directors and item 64 of the Public Disclosure Policy, the members of the Board provide a "...personal statement on the other offices or positions they hold..."; in accordance with the provisions of the Disclosure Policy this statement should be published. An analogous assets declaration system is also in force at the EIB for the members of the Management Committee and a large part of staff working in the Finance Directorate.
27.		- the establishment of a register of interests to avoid conflict of interests.	See Item 26.

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28.	- Integrity Policy and Compliance Charter para 15 (amended policy para 19)	<i>Bankwatch group:</i> EIB should become more proactive by implementing a detailed corporate screening of both promoters and contractors, including analyses of the integrity systems in place within companies.	OCCO applies risk-based approach in screening counterparts, in accordance with the provisions of Directives 2005/60 and 2006/70. In complex cases OCCO, in addition, endeavours to assess all participants to the financial structure.
29.	- Activities of OCCO paras 16-17 (amended policy paras 17-20)	<i>Bankwatch group:</i> While EIB is already implementing EU law with regard to registration of promoting and contracting agencies in tax havens, we would recommend the adoption of a pro-active policy that vigorously encourages companies to avoid this practice, which clearly originates from reasons of tax avoidance.	The Bank implements the relevant FATF 40 Recommendations, applies AML-TF principles contained in the relevant EC Directives and conforms to best international practice. It checks there is no abuse of tax havens and evaluates this prior to the conclusion of the operation.
	Obligation to Report Suspected Fraud and other Illegal Acts		
30.	- Staff paras 18-19 (amended policy para 22)	<i>Dunnett:</i> The policy should go beyond point 18 and should state that it expects staff actively to seek ways to prevent/deter corruption in the Bank's projects. The staff duty is not limited to reporting suspicions of corruption.	As stated in the Policy, EIB staff are expected to go beyond their mere reporting obligations and to adhere to the highest levels of integrity – see Para 6 of the amended Policy.
31.		<i>Bankwatch group:</i> criteria creating obligations on staff to report “reasonable” suspicion or allegation of fraud and other illegal acts are unclear – these criteria need to be clarified	OCCO does provide training on the Staff Code of conduct and on AML to staff (e.g. orientation). Elements are also incorporated into PJ's procurement training.

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32.	- Borrowers Para 20 (amended policy para 23)	<i>Dunnett:</i> Borrower’s duty to report should apply to both EU and non-EU Borrowers; and create a “plausible sanction for breach of this obligation”	As the situation currently stands, EU Borrowers have a general contractual obligation to inform the Bank of any material adverse change to the circumstances in which the loan was made. Any breach of this obligation is subject to the normal contractual remedies available to the Bank.
33.		<i>TI:</i> In cases where 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. Several anti-corruption conventions already foster greater transparency in how governments are accountable to the public and this type of preventive measures can give citizens and other stakeholders a chance to monitor how projects are being carried out and be able to report cases of suspected corruption fraud or other illegal acts.	The responsibility for making public its receipts and borrowings lies with the individual governments and is outside the Bank’s role. Nevertheless, 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 (through ex-post procurement reviews, review of invoices etc.) that the money is used for the Project to be financed.

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34.	- Reporting Procedures Paras 21-22 (amended policy paras 24-25)	<i>Bankwatch group:</i> We seek clarification of the process by which affected people or interested stakeholders can report corruption to the EIB – it is by no means clear which bodies within the Bank take primary responsibility, nor the process by which they can be engaged	The EIB encourages anyone with relevant information to report allegations of prohibited practices, money laundering or terrorist financing. In order to make this easier, the contact information will be more clearly published on the EIB website and included in the policy itself.
35.	- Whistleblower Protection Paras 23-24 (amended policy paras 26-27)	<i>TI (RR)</i> suggested EIB review protection of whistleblowers (comparing EIB with the UN’s “gold standard” system).	The Bank is conducting an overview of its existing provisions concerning protection of whistleblowers with the aim of establishing an integrated and comprehensive approach to this issue, taking also into consideration the existing framework and experience of the EU Institutions and best practice at international level.
36.		<i>TI:</i> The present design does not provide a comprehensive system to ensure that the necessary mechanisms are actually in place to protect whistleblowers. TI recommends that the EIB consider the standards set by the recently developed policy for protection of whistle-blowers at the United Nations to inspire a revision and improvement of its policy.	See Item 35
37.		<i>Dunnett:</i> Protection of whistleblowers is supported by Arts 33 and 37 of UNCAC	See Item 35
38.		<i>Bankwatch group:</i> whistleblower protection measures need to be strengthened in order to guarantee adequate protection to all staff	See Item 35

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39.		<i>OLAF</i> : The protection of whistleblowers is an important tool to obtain good quality information on fraud and corruption. As experience shows, however, formal rules might not be sufficient to encourage potential whistleblowers to come forward. Therefore, EIB might consider further development of the rules on confidentiality and possibly even tools for anonymous exchange of information.	See Item 35
40.	Principles for the Conduct of Investigations		
41.	- Authority To Conduct Investigations paras 25-26 (amended policy para 28)	<i>Protimos</i> : How exactly does EIB cooperate with OLAF and national jurisdictions regarding prosecutions?	<p>IG/IN works closely with OLAF through full exchange of all relevant information and discussions on each case. There are also joint investigations where warranted. This close cooperation is now better reflected in the policy and investigation procedures.</p> <p>Appropriate cases are referred for further investigation and where appropriate prosecution, usually through OLAF.</p>

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42.		<i>TI:</i> In addition to the existing IG/IN, the EIB could consider the appointment of a special independent monitor, who should review and monitor the implementation of this policy within EIB as well as review major cases of corruption within the IG of the Bank. Reports produced by the independent monitor should be made public and reported periodically to the Audit Committee and Board of directors of the EIB.	The independent monitoring function exists. The Inspector General and OLAF both provide “an extra pair of eyes”. In addition, the oversight function is performed by the Audit Committee over IG/IN who refers to the investigative work in its annual report.
43.	- Independence Para 27 (amended policy para 29)	<i>OLAF (MP):</i> how the independence of the IG is assured.	See statement of principle in Para 28 of the amended Policy. In addition, the Audit Committee is formally notified of the circumstances regarding the appointment, replacement reassignment or dismissal of the Inspector General.
44.		<i>Dunnett:</i> EIB’s power to investigate should explicitly apply to both EU and non-EU Borrowers	IG/IN is authorised to investigate both types of cases and the language in the policy has been revised to better convey this.
45.		<i>Bankwatch group:</i> How is the IG/IN’s independence institutionally guaranteed? It must be guaranteed through adequate institutional provisions.	See Item 43.
46.	- Access to Information Paras 30-32 (amended policy paras 32-34)	<i>TI:</i> TI recommends that audit rights should be a standard provision of all contracts. This is current practice at the World Bank, for example, and we consider it of vital importance.	Finance contracts require the Borrowers to allow persons designated by the Bank, as well as persons designated by other European Community institutions or bodies when so required by the relevant mandatory provisions of European Community law, to visit the sites, installations and works comprising the project and to conduct such checks as they may wish, and shall provide them, or ensure that they are provided, with all necessary assistance for this purpose. The Bank’s experience of obtaining information has not disclosed problems so far.

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47.	- Rights of Staff Paras 35-36 (amended policy paras 37-38)	<i>OLAF</i> : It might be useful to clarify the rights of defence of investigated parties' rights such as legal advice, right not to incriminate oneself, access to the file etc.	IG/IN undertakes administrative investigations recognising the principles of due process – see amended Policy paras 37 and 38.
48.	Disciplinary actions and Other Remedies		
49.	- Remedies Against Outside Parties Paras 40-42 (amended policy paras 42-45)	<i>Protimos</i> : Is there a written protocol of EIB's cooperation with OLAF and national jurisdictions regarding prosecutions?	See Item 41. OLAF's investigative powers are governed by the relevant Community regulations.
50.		<i>Dunnett</i> : EIB should contractually retain the right to share data in confidence with: (a) a national anti-bribery citizens' body (b) EU bodies (c) international organisations (as per the Uniform Framework)	(a) There is no contractual provision and sharing information with the first group could be problematic and would rarely be appropriate; (b) As regards EU bodies, under the finance contract the Bank has the right to divulge documents relating to the Borrower and the Project to any competent European Community institution or body in accordance with the relevant mandatory provisions of European Community law; (c) There is no contractual provision. However, sharing information with the IFIs is done in compliance with EU and Bank rules and procedures.
51.		<i>Bankwatch group</i> : several aspects of the EIB's authority to investigate corruption allegations still need to be strengthened. We seek clarification as to how the IG will coordinate with OLAF and any other necessary bodies to ensure that any legitimate corruption allegation is automatically investigated with appropriate rigour.	See Item 41 – EIB's role does not extend to monitoring of investigation and prosecution cases by national bodies, although we will always request to be notified on the final outcome. Also, EIB will provide the authorities with appropriate assistance when requested

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52.		<p><i>Bankwatch group:</i> We are also deeply concerned about the process by which an EIB investigation gives rise to a prosecution. What steps will EIB take to ensure that prosecutions are brought when evidence of corruption is gathered especially if host countries' legal systems prove inadequate or there is no will to prosecute? One possibility might be the covenancing of agreements within loan contracts, compelling the legal systems of sponsoring states to follow up on evidence of corruption. We would ask the Bank to set in place preliminary guidelines on its expectations concerning the uses to which investigations are put after sufficient evidence has been provided to the appropriate authorities.</p>	<p>As a bank, we cannot compel national authorities to act. Our possibilities are particularly limited when the state is not the borrower. However, it is and will continue to be, our policy and practice to draw the attention of the relevant authorities to any illegal acts, or credible suspicions or allegations of illegality, acting either directly or through OLAF as appropriate in the particular case.</p>
53.		<p><i>Bankwatch group:</i> We recommend that EIB should suspend disbursements to the specific operation once an investigation case is opened. The Bank should set out what obstacles it perceives in taking such a course of action and, in addition, to set out what circumstances it would consider suspending disbursement of loans. Spelling out clearly the possibility of suspending disbursements might be a deterrent that ensures companies take measures to root out corruption in their operations.</p>	<p>On a case by case basis, EIB may decide not to move ahead with contract awards or make disbursements, based on the terms of the finance contract.</p>
54.		<p><i>Bankwatch group:</i> EIB should commit to the maximum use of all mechanisms under the OECD Convention Combating Bribery, including mutual support through OLAF for investigations and trials taking place outside the EU and the possibility of</p>	<p>See Item 52.</p>

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		trials taking place in corporation's home country instead of project host countries	
55.	Miscellaneous other comments		
56.	- Debarment/ Exclusion	<i>Protimos</i> : What is EIB's position on debarment? What are the consequences following the prosecution of European companies for bribery in Lesotho?	EIB intends to establish a fair and transparent exclusion system taking into account the EU institutional framework. In doing so, EIB will work with the European Commission to discuss how the implementation of the recent modifications to the EC Financial Regulation and to its Implementing Rules have been put in place. Further work (detailed analysis as well as extensive discussions with the Commission) will be necessary in the coming months to ensure the exclusion scheme applies fairly, transparently and efficiently and, as importantly, that the EIB gains direct access to the Commission's database of excluded candidates and bidders. A status report on the progress by EIB in this regard will be included in the Annual Report of Investigations for 2007, to be published on the EIB website.
57.		<i>TI</i> : EIB's reliance on convictions (very few) and the EC's Early Warning System (EWS) compares unfavourably with the World Bank's debarment (300 plus cases).	See Item 56.
58.		<i>TI</i> : TI strongly encourages the EIB to expand and develop the sanctions available, in particular debarment (see Annex A, a set of recommendations for the Development and Implementation of an effective Debarment System in the EU).	See Item 56.
59.		<i>TI</i> : TI believes that the option of debarment should apply to both finance contracts and procurement.	See Item 56.

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60.		<p><i>TI:</i> TI welcomes the possibility of ‘res judicata’ debarment but strongly encourages the EIB to expand the concept and allow debarment based on administrative (non res judicata) decisions as well – such as whenever a potential tenderer has “been guilty of grave professional misconduct proven by any means that the contracting authority can justify”. It is TI’s opinion that litigation (e.g. decisions challenged in the ECJ) can be avoided if the system is designed, implemented, managed and operated by the highest standard.</p>	See Item 56.
61.		<p><i>TI:</i> Access to information is a key element for the transparency and effectiveness of debarment. For this reason, EIB debarment cases should be shared with the EU-wide debarment system foreseen in the revision of the Financial Regulation (COM (2005) 181) adopted by the Council of Ministers in Dec 2006. In the regulation, an exchange of data between all parties procuring under the EU budget is foreseen, among EU institutons, members and third parties and countries. Whether or not formally covered by this regulation, the EIB would be well advised to participate in the system it creates.</p>	See Item 56.
62.		<p><i>Dunnett:</i> There are benefits to establishing a uniform and fair universal system of debarment but EIB should resist pressure to establish a reciprocal blacklist of excluded suppliers and contractors and consultants and should reverse point 10 of the policy statement.¹ There are many reasons in EU</p>	See Item 56.

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		administrative law, natural justice, economic purpose and international policy for this recommendation	
63.		<i>OLAF</i> (MP) noted that the EU also uses an administrative procedure to exclude and sanction entities (under Art 96 of the Financial Regulation applicable to the Budget).	See Item 56.
64.		<i>OLAF</i> noted that EIB does not currently have access to the Commission's database.	See Item 56.
65.		<i>Bankwatch group</i> : EIB's restrictive interpretation of EU legislation is preventing the Bank from putting in place a proper administrative debarment procedure along the lines of those already adopted by other IFIs – EIBs limited immunities and privileges should be used as an excuse to avoid the establishment of an administrative sanctions procedure. EIB should explore all possibilities under EU law to develop innovative instruments to bypass problems and limitations associated with reliance on exclusion based on criminal convictions. In particular:	See Item 56.
66.		- in the context of Council Regulation 1605/2002, EIB should explore all possible avenues to set up a mechanism of administrative sanctioning – including financial penalties – compatible with debarment procedures in place in other IFIs notably the World Bank and other MDBs.	See Item 56.
67.		- once such a mechanism is established, the EIB should commit to a policy of mutual debarment and/or cross-debarment with other IFIs, as it has the	See Item 56. The subject of cross-debarment is an extremely complex issue - the IFI's are still working through the implications of cross-debarment for

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		potential to make corruption and fraud infinitely more dangerous and expensive for companies and could be a critically important deterrent. If EIB fails to cross-debar, it would become a weak link in the development finance system.	their individual organisations. Equally, the issue still requires clarification within the EU Member states. Nevertheless, additional protection in EIB's operations may be provided by, for example, increased up-front due diligence, where possible. In the particular case of joint co-financing of projects with other IFIs, EIB accepts the debarment provisions applied by the co-financier, when the procurement rules of the co-financier are applicable to the tender in question.
68.		- if allegations of corruption are confirmed, the EIB should also withhold support for the specific operation, while recovering all funds misused.	EIB will adopt a case-by-case approach to the suspension of the loan and/or the recovery of funds, as it may be possible to put in place appropriate rectification measures.
69.		<i>Bankwatch group:</i> It is unclear how EIB will cooperate with other European institutions in the definition of a blacklisting mechanism for those companies found guilty of corruption. We believe it would be important that such a blacklist be made public in order to leverage substantial change in those companies excluded e.g., the establishment of strong and transparent systems within them.	See Item 56.
70.		<i>OLAF:</i> A clear policy should be developed by the Bank in the area of exclusion to prevent unreliable operators from benefiting from EIB financing. We think that this policy should as far as possible follow the same rules as those developed by the European Commission. Such a system should not be based only on 'res judicata' decisions of the national courts, as they are difficult to obtain and usually with considerable delay that might render the sanctions system ineffective.	See Item 56.

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71.		<i>OLAF</i> : The reference in EIB's policy to Art 45(1) of directive 2004/18 means that similar exclusion criteria would apply. However, in addition to the directive, the Commission system foresees a database of non-reliable operators (see Art 95 of the Financial Reg no. 1605/2002 as modified by Council Regulation no. 1995/2006). Does EIB intend to have its own database? It would be desirable that the Commission and the EIB could exchange and use such data as appropriate, which is not yet the case.	See Item 56.
72.		<i>OLAF</i> : OLAF would support a change of the policy at the Commission so that the database based on the FR is available also to the EIB.	See Item 56.
73.	Reactive vs. Proactive	<i>CRBM</i> : Current approach is reactive and suggested a more proactive approach (e.g., information appears in the media or when NGOs report allegations).	There are already strong proactive elements in our approach. In fact, we already follow the proposed approach, actively reviewing and following up on press comment and information passed to us by NGOs and others.
74.		<i>TI (RR)</i> noted that the Bank was strong in investigations but was lacking in prevention. He suggested that EIB request companies to put in place integrity systems.	The Policy has preventive elements, in particular the covenant of integrity.

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75.		<i>OLAF</i> : An effective sanctions system at EIB may also provide for the opportunity to introduce other anti-fraud measures such as leniency/voluntary disclosure programs etc.	See Item 56. The Bank cannot grant immunities to third parties and consequently cannot create a VDP with appropriate incentives for entities to volunteer information.
76.		<i>Bankwatch group</i> : The Bank must be much more proactive in combating corruption, acting earlier to pre-empt illegal acts and more aggressively to root them out after they occur.	See Items 73 and 74.

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77.		<i>Bankwatch group:</i> preventive and pre-emptive measures need to be significantly strengthened in the current draft policy in order to give EIB a more proactive role in combating corruption before illegal acts occur	See Items 73 and 74.
78.	More effective monitoring of project implementation	<i>TI (RR)</i> suggested use of civil society groups for better monitoring of fraud	In cases where there are indications of a prohibited practice occurring during the procurement process or project implementation, the Bank will review inputs from third parties. In this regard, EIB welcomes civil society's role in monitoring the procurement and implementation processes and reporting allegations of fraud or corruption which will be investigated.
79.		<i>TI:</i> TI encourages the EIB to 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.	See Item 78.
80.	Resources	<i>CRMB:</i> Are sufficient resources dedicated to this initiative? Is there sufficient internal capacity?	Resources match current requirements. The Bank's processes mean that resources are reviewed at least annually.
81.		<i>Dunnett:</i> High standards implies the allocation of adequate resources. The Bank should modulate its procedure to the level of corruption risk in each country and thus reduce the administrative burden. E-procurement could further reduce the costs	On resources, see Item 80. The measures against fraud and corruption are applied equally in each country See Item 19(e)

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82.		<i>TI:</i> The issues are complex and the implementation of any anti-corruption policy will demand significant efforts and resources over time.	See Item 80. The need for resources will be evaluated from year to year.
83.	Global Loans	<i>CRMB:</i> EIB should clarify the Bank’s control systems regarding Global Loans and how EIB deals with “red flags”.	Global Loans: control is left to the borrower/financial institution whose capacity to do so will have been evaluated by EIB in the loan appraisal process. Red Flags: additional training will enable staff to better recognize and report red flags to IG/IN
84.	Disclosure	<i>CRMB:</i> Finance Contract should be publicly disclosed	On the basis that confidentiality is necessary in commercial activity, EIB does not publish the finance contracts. Art 28 of the Bank's Public Disclosure Policy states, as a constraint to the disclosure of finance contracts: “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. The Bank does not object to project promoters, borrowers or other competent parties making information available on their relationship and arrangements with the EIB.”
85.	Presentation of policy	<i>Dunnett:</i> links in f/ns 1 and 4 are incorrect	The text and references of the policy have been revised.
86.	Web site	<i>Dunnett:</i> Add link to IFI Task Force and Uniform Framework from IG website	The link has been added to the Policy. It is: http://www.eib.org/publications_unlisted/ifi-anti-corruption-task-force-uniform-framework.htm
87.	National Capacity to respond to corruption	<i>Dunnett.</i> Use trust funds to encourage Borrowers to respond effectively to corruption risks, including with PACI networks	The use of trust funds to encourage borrowers/ governments to respond effectively to corruption is a relatively new concept. The EIB would consider doing so if it received an appropriate mandate and funds.

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<p>88.</p>	<p>UNCAC Implementation</p>	<p><i>Dunnett:</i> Each Board report on a non-EU project should note whether the host country has signed and ratified the UNCAC; and</p> <p>EIB should internally note whether the relevant national legislation on public procurement:</p> <ul style="list-style-type: none"> • addresses the consequences of corruption, as required by Article 34 of UNCAC; and • ensures that persons damaged by corruption may seek redress, as required by Article 35 of UNCAC, in particular by providing, for example, for: (a) an independent public agency to ratify major procurement contracts; or (b) a short automatic standstill period between announcement of the winner of a procurement process and signature of the contact 	<p>Measures to actively promote the ratification of UNCAC and the review by EIB of the domestic procurement legislation are outside the scope of EIB's mandate. Information on ratification of the UN Convention Against Corruption could be included in the appropriate loan note. The use of information concerning which countries have ratified UNCAC, perhaps as an indicator of corruption risk in relation to a specific loan, would appear to be premature given that 11 of the EU Member States have not yet ratified this convention.</p> <p>The Bank requires that, for projects outside the EU, the main principles and mechanisms of the EC public procurement rules, including those covering review procedures, be followed. These are considered to provide adequate protection for aggrieved parties and draw upon the same principles enshrined in the UNCAC and OECD conventions.</p>
<p>89.</p>		<p><i>TI:</i> Incorporating Integrity Pacts with monitors into the anti corruption measures applicable to procurement would be worth exploring. Such provisions are already included, for example, in the UNCAC and therefore will become standard practice in the over 120 countries which are Parties to the Convention.</p>	<p>The integrity pacts suggested by TI provide similar protection to the covenants of integrity required by EIB.</p>

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90.	Formulation of Policy	<p><i>Dunnett:</i> EIB should state what external and internal analysis of the phenomenon of corruption it endorses or adopts in forming its policy:</p> <ul style="list-style-type: none"> - senior management recognition of the gravity of the issue - policy sufficiently rooted in operations - policy should note the relevant research by NGOs so that it does not “stand in isolation” 	<p>This level of detail is not required in the policy, but the importance of the policy to EIB is reflected in the fact the policy is approved by the Board of Directors and is subject to a public consultation exercise.</p>
91.	Cost Estimate for Policy Implementation	<p><i>Dunnett:</i> Bank should consider broadly stating the cost of resources it devotes to the anti-corruption policy and the extra resources that it intends to use to implement its new commitments.</p>	<p>See Item 80.</p>
92.	Credibility of EIB	<p><i>Dunnett:</i> EIB should consider whether its failure to be consistent transparent and accountable in its structure and ways of doing business destroys its credibility in tackling corruption</p>	<p>The Bank does not agree with this comment – EIB is transparent and accountable in its structure and ways of doing business.</p>
93.	Disclosure of Project Payments	<p><i>Bankwatch network:</i> IFC and EBRD have adopted a requirement that sponsors of oil, gas and mining projects must disclose project payments to host governments and (IFC) disclose key agreements of public concern. EIB is urged to adopt the letter and spirit of these new laws and to adopt innovative and flexible approaches to maximize anti-corruption mechanisms in its lending.</p>	<p>See Item 14(D) on EITI.</p>

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94.	Second Round of Consultations	<i>Bankwatch network:</i> Given the complexity of the issues, EIB should engage in a second round of in-depth discussion with stakeholders	The EIB agrees with the suggestion that a second round of consultations will be held. Recognising the importance of external stakeholder input, EIB also agrees to include a further meeting as part of the consultation process.
95.	References to EU Legislation	<i>Bankwatch network:</i> More explicit and detailed references to the provisions of EU legislation relied upon	More detailed references have been inserted in the policy but it cannot, by its nature, be exhaustive.
96.	Policy Reviews	<i>Bankwatch network:</i> Given the improvements in EU Legislation, best practice and international law, EIB should commit to review its policy every 3 years with all stakeholders in this review process.	Our practice will be to update the anti fraud policy regularly, at least every five years. Appropriate public consultation will play a part in the process.
97.		<i>TI:</i> TI recommends that the EIB review its policy on a regular basis, not only to ensure that it reflects improvements and positive developments both at EU and international levels but also to regularly enrich the policy with lessons learned from its implementation.	The Bank agrees that it will be important to review the policy in light of developments, both within the Bank and beyond, hence paragraphs 45 and 46 of the Policy.
98.		<i>TI:</i> Encourages the EIB to consider the principles that inspired the policies adopted by the Wolfsberg Group in the subsequent review of the policy.	See Items 96 and 97.
99.	Implementation of Policy	<i>TI:</i> TI encourages the EIB 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.	The policy reflects current practice – updates on the evolution of the policy will be made in IG’s Annual Report as appropriate and will be published on the web site.

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100	Duty of Care	<i>Bankwatch group:</i> at what point can EIB be said to owe a duty of care to its members or investors in their uses of EU public funds? And conversely, at what point does the EIB consider its member states and/or borrowers to owe a corresponding duty of care to the Bank, once corruption allegations have been raised?	More than 90% of EIB loans are funded from borrowing on the international capital markets. The remainder is Community funds, which EIB has a mandate to manage. EIB is responsible for both types of resources and is aware of its responsibilities to ensure the monies are not misused, hence this policy, its governance structures and statutory obligation to use our funds in a rational manner.
101	Representation Agreements and Agents' Commissions	<i>Bankwatch group:</i> there is no reference to the controversial issue of representation agreements, through which corporations contract with agents to act on their behalf in securing project contracts. Agents' commissions have long been recognized as a common vehicle for the payment of bribes. EIB should carefully consider this issue and include in its policy clear requirements for the disclosure of agents' commissions on all transactions.	EIB will address the issue of disclosure of agents fees at the next IFI Heads of Procurement meeting. It should be noted that the Covenant of Integrity also applies to agents.
102	Exchange of Information with EU institutions	<i>Bankwatch group:</i> It is unclear how EIB is cooperating with other EU institutions and the European Commission in the exchange of sensitive information included in its archive about contractors' behaviour and their records. We understand that the EIB internal compliance office is playing a role in this regard and request that the bank strengthens this function and related instruments.	The exchange of information, including personal data, is undertaken in compliance with EU regulations and the Bank's policies and procedures (see also Item 106). There is full transparency between EIB and OLAF. Access by the EIB to the EC database containing information on excluded candidates and tenderers is being considered.

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103	Global Loans	<i>Bankwatch group:</i> We understand that the policy will apply to all EIB operations, inside and outside the EU. We welcome this comprehensive approach but would like to see it considerably extended to see specific transparency procedures put in place in the assessment of global loans. Given that the Bank apparently includes specific clauses in the sub-agreements signed together with the global loans, it would be appropriate to mention and detail this specific procedure in the text of the new policy.	See Item 12 on the EU/non-EU distinction.
104		<i>Bankwatch group:</i> EIB should develop specific corporate screening for those private financial institutions who receive global loans in order to understand what is their record in past operations, their internal integrity systems and their anti-fraud and anti-corruption policies, and to allow a close monitoring of the financial intermediary's commitments to actively promote the anti-fraud and anti-corruption policy	Outside the EU, the screening of global loan intermediaries takes place, both before (through OCCO) and during appraisal. Within the EU, financial institutions have to comply with the relevant EU directives and national legislation.
105	Definitions	<i>OLAF:</i> we suggest providing a general definition or explanation of notions used in the text such as: borrower, promoter, contractor, beneficiary, supplier etc.	The trade-off has been made between readability of the policy and unduly legalistic text.

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106	Data Protection	OLAF: The policy and procedures do not refer to data protection issues. Unless such rules are provided by another document and apply generally, the EIB might consider developing appropriate provisions here in accordance with EU standards	The Regulation EC/45/2001 on data protection applies to the EIB.
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<i>Item no.</i>	<i>Topic</i>	<i>Stakeholder proposal</i>	<i>Comments/Proposal</i>
Investigative Procedures			
107	Standard of Proof	<i>CRMB</i> : what does EIB consider to be “reasonably sufficient evidence” in terms of the findings of an investigation and what due diligence of a firm does the Bank undertake in approving a loan.	IG/IN uses the standard “more probable than not” and the “Findings” section of the amended procedures (paras 24 and 25) provide additional information. Concerning due diligence, see Item 13.
108		<i>Bankwatch group</i> : The current policy does not spell out clearly enough which criteria will be adopted by EIB investigators in the evaluation of allegations of fraud and corruption. These criteria ought to be described in more detail.	Para 7 of the amended procedures identifies some of the primary factors that are important in weighing whether to launch a full investigation.
109	Opening of cases	<i>Bankwatch group</i> : We seek clarification of the criteria EIB uses to open cases from sources of information not specifically filed with them.	See Item 73 and paras 3-8 of the amended Procedures.