

Independent Complaints Mechanism FMO

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Definitions

Definitions used in this document:

Admissible Complaint	A Complaint for which the Panel has decided that it fulfills the Admissibility Criteria.
Admissibility Criteria	Characteristics of a Complaint as set out in 3.1.4 which have to be met, before a Complaint can be processed.
Client	The entity that is financed by FMO on the basis of a direct contractual relation and responsible for carrying out and implementing all or part of the FMO-Financed Operation.
Complainant	The External Party that is filing the Complaint.
Complaint	A written communication of an External Party addressed to FMO which claims that it has been or will be affected by an FMO-Financed Operation.
Complaints Office	Function performed by FMO's Internal Audit function, which registers and acknowledges receipt of Complaints, coordinates adequate fulfilment of the Complaints process and provides practical support to the Independent Expert Panel.
Compliance Review	The process to determine whether FMO has complied with the policies (as further specified in 2.3) that may be relevant for an Admissible Complaint.
Dispute Resolution	The process to assist in finding a resolution for the issues underlying an Admissible Complaint. This process may include information sharing, fact-finding, dialogue and mediation. A pre-condition for Dispute Resolution is that all relevant parties are willing to participate in such a process.
EDFI	European Development Finance Institutions ASBL. It is an association of 15 bilateral institutions operating in developing and reforming economies, mandated by their governments to promote sustainable development through financing and investing in profitable private sector enterprises.
External Party	Any natural or legal person that is not a party to the financing agreements between FMO and the Client (non-exhaustive examples: customers of the Client, individual persons or groups, workers, non-governmental organizations representing affected persons).
FMO-Financed Operation	Any activity or any asset of the Client that is or is going to be financed by FMO funds or from funds administered by FMO in whole or in part, regardless of the nature of the financial instrument (loans, equity, project financing, grants, technical cooperation assistance and guarantees).
ICM	Independent Complaints Mechanism
IEP	Independent Expert Panel
IFC Performance Standards	The environmental and social performance standards of the International Finance Corporation (IFC) that define the Clients' responsibilities for managing their environmental and social risks.
Independent Complaints Mechanism	DEG's and FMO's joint complaints mechanism for External Parties as presented in this document.
Independent Expert Panel	A group of three persons assessing and handling Complaints, with environmental, social, legal and financial expertise. In exercising its mandate the Panel is fully independent of FMO and DEG.
Independent External Panel	Independent Expert Panel
Mechanism	Independent Complaints Mechanism
Panel	Independent Expert Panel
Preliminary Review	The process to assess the relevant information in order to get a good understanding of the issues underlying an Admissible Complaint and determining the most appropriate next step – i.e. a Dispute Resolution process and/or Compliance Review process – to address the issues underlying the Admissible Complaint.
Receipt Items	Information characteristics of a Complaint as set out in 3.1.2 which have to be met, before a Complaint can be processed.

1. Background Information

1.1 Introduction

1.1.1 With this document, FMO outlines its Independent Complaints Mechanism and accompanying procedure. This document describes the structure and governance of the Mechanism, which allows External Parties to file a Complaint concerning an FMO-Financed Operation. In this way FMO strives to implement a robust and independent procedure and to communicate transparently about it to stakeholders.

1.1.2 The Mechanism ensures the right to be heard for Complainants who feel affected by an FMO-Financed Operation in order to enable resolution of disputes and assist FMO in drawing lessons learned for current and future operations.

1.1.3 The Mechanism is a joint initiative of the DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH and Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V., also known as the Netherlands Development Finance Company (FMO). All information in this document, except for references to FMO policies and procedures, is relevant for DEG as well. Both institutions have a joint approach when Complaints relating to co-financed Clients are received.

1.1.4 The Mechanism aims to align with other FMO policies and procedures which are based on international standards:

- FMO is committed to achieve positive sustainable development outcomes through its investments. At the same time FMO recognizes that such development can also have a negative impact on local communities and the physical environment within which they live or upon which they depend for their livelihoods. FMO is committed to ensuring that the costs of economic development do not fall disproportionately on those who are poor or vulnerable, that the environment is not degraded in the process and that natural resources are managed efficiently and sustainably, i.e. are not depleted at the expense of future generations.
- FMO also recognizes the responsibility of businesses to respect human rights, wherever they operate and independently of States' abilities and willingness to fulfill their human rights obligations. FMO itself respects human rights, and also acknowledges the responsibility of its Clients to respect human rights. Meeting this responsibility also means creating access to an effective mechanism that can facilitate early indication of, and prompt remediation of various related Complaints.

1.1.5 As part of this responsibility FMO supports its clients in addressing environmental, social and related issues arising from their business activities by requiring them to establish and administer appropriate mechanisms to address complaints from communities affected by FMO-Financed Operations. In addition to these mechanisms and procedures, the role of administrative and/or legal procedures available in the host country should also be considered. When applicable, an information request or resolution can be sought with the Client. Nonetheless, there may be cases where Complaints from those affected by FMO-financed business activities are not fully resolved at the business activity level. For these cases the Independent Complaints Mechanism may be another route to address and resolve issues at hand.

1.2 Institutional framework

1.2.1 The Independent Complaints Mechanism is not a legal enforcement mechanism. It offers an effective avenue for addressing concerns and it promotes a mutually constructive relationship between FMO and External Parties.

1.2.2. Consequently, this document shall not be deemed to confer any additional rights of access to justice to the persons lodging a Complaint under the procedure set forth therein.

1.2.3 The Mechanism consists of the Independent Expert Panel and the relevant Complaints Office of DEG and/or FMO.

1.2.4 FMO's Complaints Office function is performed by FMO's Internal Audit function, which is independent from FMO's operations and reports directly to the Chief Executive Officer and the Supervisory Board of FMO.

1.2.5 FMO makes every effort to ensure that its own operations respect national and EU policies and international standards.

1.2.6 FMO has a close relationship with other financial institutions such as other EDFI members and multilateral financial institutions. It maintains a frequent dialogue with these institutions and aims at alignment and coordination with other EDFI members.

1.2.7 The ICM is member of the global network of Independent Accountability Mechanisms (IAM). The IAM network consists of several international financial institutions that have established similar mechanisms.

2. Principles

2.1 Purpose

2.1.1 The Independent Complaints Mechanism serves the following functions with respect to Admissible Complaints:

- Attempt, whilst acting as a problem solving function, to resolve concerns raised by the Complainant(s) through a consensual process with the Complainant, Client and other relevant stakeholders (as appropriate);
- Evaluate and report compliance with FMO policies and other applicable standards;
- Provide advice and recommendations to FMO management; and
- Follow-up and report on efforts to take corrective actions whenever applicable.

2.1.2 In order to ensure proper corporate responsibility and accountability of FMO towards all its stakeholders, the Mechanism offers Dispute Resolution (if possible) and Compliance Review.

2.1.3 The Mechanism applies to FMO-Financed Operations. Both FMO and DEG are governed by national law and thus have to comply with legal restrictions and safeguards pertaining to disclosure and protection of personal and Client data. This means that FMO and DEG have to treat all Client-related details and documents as confidential, unless the Client has consented to FMO/DEG sharing information with the Panel and with the broader public in relation to (i) any future admissible Complaint, and/or (ii) subsequent reports, findings and/or recommendations following such a Complaint.

In 2014 - in order to enable the functioning of the ICM - FMO and DEG commenced to introduce necessary contractual arrangements into their Client agreements. These arrangements expand to the Panel and persons instructed on their behalf, the enforceability and benefit of the contractual arrangements between FMO and DEG and their Clients, notably those covering access to Client's information, its premises and senior management.

If a Complaint relates to a case in which the necessary contractual arrangements are missing, these have to be agreed before the ICM can effectively address the Complaint. This will require additional time and, depending on the scope of the actual contractual arrangements, might restrict the Mechanism as set out in the ICM Policy. In the event that the Complaint requires an approach, which deviates from the ICM Policy, the Complainants will be informed on a regular basis on the approach and the process that will be followed.

2.1.4 Decisions concerning the investment mandate, its credit policy guidelines or other generic aspects (e.g. FMO's business model) fall outside the scope of the Mechanism.

2.2 Guiding Principles

2.2.1 Subject to applicable legal constraints, the Independent Complaints Mechanism shall be transparent in its operations and outputs.

2.2.2 The FMO Complaints Office is independent from operational activities and from the services responsible for the activities challenged by the Complainant(s). The Mechanism ensures that each Complaint is dealt with by the highest standards of objectiveness and commitment whilst safeguarding the interest of all the internal and external stakeholders of FMO.

2.2.3 The Independent Complaints Mechanism shall be accessible to affected people and/or their representatives, being External Parties, and be effective in responding in a timely manner to concerns expressed by such people being or feeling affected by FMO-Financed Operations.

2.2.4 If the Complaint concerns aspects like fraud, bribery, corruption and/or money laundering, the ICM will consult with FMO's Internal Audit function to determine the appropriate channel(s) for processing the Complaint.

2.3 Applicable Standards

2.3.1 One element of the Mechanism is to review compliance of FMO's financing activities with FMO policies.

2.3.2 All policies can be found under <https://www.fmo.nl/policies-and-position-statements> and are (amongst others) based upon relevant laws, principles and guidelines, such as the IFC Performance Standards, the Equator Principles, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

3 Rules of Procedure

3.1 Complaint and admissibility

3.1.1 The Complaint can be submitted in any language of the Complainant by letter, e-mail and/or web form. Any communication thereafter will be in English with – if applicable – a translation in an official language of the country of the Complainant. Processing of Complaints not submitted in English may require additional time due to the need for translation. The Complaints Office and/or Panel will timely notify the Complainant of any delays caused by translation.

3.1.2 The External Party who sends a Complaint is requested to submit the following Receipt Items:

- Description of the Complaint and the harm suffered or likely to be suffered;
- Where appropriate, an indication which FMO policy/policies has/have allegedly been breached;
- A clear description of the FMO-Financed Operation and location to which the Complaint is related;
- Name and full address, telephone number and if possible e-mail address;
- Name of FMO employee whom the Complainant had contact with (if applicable);
- A copy of information related to – or relevant for – the Complaint, including an overview of actions (e.g. legal, contacts with the Client) that have already been taken to solve the issue.

3.1.3 Any person or group, including civil society organizations representing affected people, being an External Party, may lodge a Complaint.

3.1.4 The following specific criteria are applicable for admissibility of Complaints:

- The Receipt Items should be made available to FMO;
- The External Party must be affected or likely to be affected by an FMO-Financed Operation;
- If an External Party is representing others, it must identify such others and explicit evidence of the representative authority must be provided;
- FMO must have or will have an active financial relationship with the Client;
- There must be an indication of a relationship between the FMO-Financed Operation and the subject of the Complaint;
- The Complaint must contain allegations of (potentially) substantial (in)direct and adverse impacts or risks;
- If applicable, other actions and consultations with relevant responsible parties to address or solve the Complaint have already taken place. This applicability will be determined by the Independent Expert Panel.

3.1.5 If the FMO-Financed Operation at issue in the Complaint is co-financed by another institution, the Complaints Office may notify the complaints mechanism(s) of the co-financing institution(s) of the receipt of the Complaint and may communicate and cooperate with the complaints mechanism(s) of such institution(s) so as to avoid duplication of efforts and/or disruption or disturbance to common parties, provided that this is in compliance with all relevant legal and contractual requirements. Where appropriate, a cooperation agreement, addressing issues such as confidentiality and sharing of information, with the complaints mechanism(s) of the respective co-financing institution(s) will be established.

3.1.6 The Independent Complaints Mechanism does not apply to Complaints with the objective of gaining a competitive economic advantage or that are excessive, repetitive (i.e. covering the same aspects), clearly frivolous or malicious in nature.

3.1.7 The ICM will assess on a case-by-case approach the admissibility of identical Complaints that already are being handled or which have been settled by other high standard administrative mechanisms (being member of the network of Independent Accountability Mechanisms) or judicial review mechanisms, in order not to duplicate work already done or hinder ongoing procedures. As indicated in paragraph 3.1.5 coordination and cooperation with other mechanisms will be aimed for.

3.1.8 Anonymous Complaints are not accepted. Nevertheless, without prejudice, a Complainant has the right to request for confidential treatment of the Complaint. With regard to personal data, the ICM will ask for consent of the Complainant to the processing and disclosure of its relevant personal data per format document after receipt of the Complaint. Once a Complaint has been deemed admissible, other affected stakeholders typically will be notified about the Complaint. The Mechanism will strictly respect and safeguard the absence of explicit consent by a complaining natural person, and refrain in such cases from disclosing the Complainants' identity to internal and external parties. The Mechanism will indicate publicly when it has restricted disclosure of identity, in the absence of explicit consent or when confidential treatment was requested.

3.2 Description of the procedure

3.2.1 After receipt of a Complaint, the Complaints Office will ensure that an acknowledgement of receipt is sent to the Complainant(s) within five working days. Complaints submitted in another language may require additional time for translation. The acknowledgement informs the Complainant(s) of the date by which the Mechanism's official reply regarding the admissibility of the Complaint can be expected.

3.2.2 The Complaint is forwarded to the Independent Expert Panel by the Complaints Office. Based on criteria, as defined in paragraph 3.1.4, the Independent Expert Panel decides within 25 working days on the admissibility of the Complaint. During this phase, the Panel can request further information from the Complainant and FMO to clarify the Complaint. In case of partial or total inadmissibility of the Complaint, the Panel will endeavour to provide, if possible, the Complainant with an advice on which measures could be taken and/or to which institution the concerns may be addressed. In case the Complaint is admissible, the Complainant(s) receives an admissibility notice with information on the next steps.

3.2.3 Once a Complaint has been declared admissible, the Independent Expert Panel will launch a Preliminary Review into the issue(s) raised by the Complainant. The Panel will aim to finish the Preliminary Review within 30 working days. However, the number of days to finish the Preliminary Review will depend on the complexity of the case and deviations will be communicated to all parties involved. After the Preliminary Review has been completed, all parties relevant to the Complaint will be informed of the next steps and an indication of the timelines of the process.

3.2.4 Based on the Preliminary Review and in consultation with any External Party, the Independent Expert Panel will either conduct a Compliance Review or, when all parties are willing to participate in such a process, facilitate a Dispute Resolution process. These activities are the core phases of the Independent Complaints Mechanism.

3.2.5 The Independent Complaints Mechanism offers the flexibility of conducting a Compliance Review after the Dispute Resolution and vice versa. Refer to the scheme in Annex 1.

Dispute Resolution process

3.2.6 In the Dispute Resolution phase, a Complaint may be handled by the Independent Expert Panel or mediators selected by the Panel, as long as all parties agree on the selected mediator. Activities of this Dispute Resolution process can include information sharing, fact-finding, dialogue and mediation.

3.2.7 The Dispute Resolution process can continue as long as needed and all participants in the process are committed to moving the process forward.

3.2.8 After the Dispute Resolution phase the Panel prepares a draft report on the outcome of the process. The Panel sends the draft report to the parties involved in the Dispute Resolution for comments regarding facts and sensitivities (to be received within 15 working days).

3.2.9 After receiving the comments, the Panel will update the report as it deems appropriate and will make the report final within 10 working days.

3.2.10 The Panel will send the final report to the Complaints Office for distribution and publication. The Complaints Office ensures that the final report is published at FMO's website and it is distributed to all parties involved in the Dispute Resolution within 5 working days after receiving the final report.

3.2.11 The monitoring role in Dispute Resolution is determined on a case-by-case basis. Any agreements reached by the parties involved in the Dispute Resolution will usually contain a mutually agreed program with timelines for implementation as well as roles and responsibilities to monitor the progress made. On the basis of the monitoring agreements made, the ICM will publicly disclose the outcomes on the FMO website.

Compliance Review process

3.2.12 Once a Complaint has been declared admissible for Compliance Review, the Independent Expert Panel will launch a full inquiry into the issue(s) raised by the Complainant; it will review the relevant documentation and records; ensure coordination of the different FMO services involved and whenever deemed necessary will hold meetings with the appropriate internal and external stakeholders and make an in-country visit in order to gather all the required information.

3.2.13 The Panel will aim to finish the Compliance Review within a reasonable timeframe. The number of days to finish the Compliance Review will depend on the complexity of the case and will be communicated to all parties involved after the Preliminary Review has been completed.

3.2.14 The Panel will prepare a first draft of the Compliance Review Report which should include the content of the Complaint as well as the findings and conclusions of the Panel. The report may also contain recommendations for the specific case and/or recommendations for FMO how to improve existing policies and/or procedures.

3.2.15 The Panel sends the draft report to the concerned FMO services to check facts (to be received within 15 working days).

3.2.16 After receiving the comments regarding factual checks, the Panel will update the draft report as it deems appropriate within 10 working days.

3.2.17 Subsequently the Panel sends the updated (i/a) draft report to the Complainant and to the Client for comments regarding factual checks (to be received within 15 working days). Nonetheless, it is up to the Independent Expert Panel to decide upon the final text.

3.2.18 The Panel will prepare a final report for disclosure to the Management Board and Supervisory Board of FMO within 10 working days.

3.2.19 The FMO Management Board will provide a management response to the final report within 5 working days.

3.2.20 The Complaints Office sends the final Compliance Review report to the Complainant(s) and informs the Complainant(s) about the FMO Management Board's response.

3.2.21 The Complaints Office ensures that the final report and Management Board's response are published at FMO's website.

3.2.22 In cases where material non-compliances are identified, the ICM will monitor the situation until actions taken by FMO assure the ICM that FMO is addressing the material non-compliance(s).

3.3 Methods of Inquiry

3.3.1 The Independent Expert Panel may, taking into account the nature of the particular Complaint, use a variety of additional investigatory methods, including but not limited to:

- Contacts with the Complainant, affected people, Client, government officials and other authorities in the country where the FMO-Financed Operation is located, and representatives of local and international non-governmental organizations;
- Visiting project sites;
- Requesting written or oral submissions on specific issues from the Complainant, affected people, Client, independent experts, government or other officials, FMO staff, or local or international non-governmental organizations; and
- Hiring independent experts to facilitate mediation or to research specific issues relating to the Complaint.

3.3.2 The ICM strives to conduct all phases within predefined time constraints. The response time can however be extended if the case is complex or the workload on the process is extensive. In those cases, the ICM will inform the Complainant duly within the predefined timelines.

3.4 Resources

3.4.1 Adequate budgetary support will be provided to the Mechanism so that it can be effective and independent in carrying out various activities in a timely manner.

3.4.2 The composition of the Panel will be such that collectively the Panel will have diverse expertise on e.g. environmental, social, legal and financial matters. Any vacancy for the Panel will be published online, to which candidates can apply. The ICM will invite relevant stakeholders to share the vacancy and application procedure with candidates they deem suitable for the position. The appointment of

members of the Panel will be approved by FMO's and DEG's Supervisory Boards, which consist of independent members.

3.4.3 The Panel will consist of three members and will be appointed for two years with an optional prolongation period of two years. It is intended to plan successive appointments in such a way, that adequate composition is continuously safeguarded.

3.4.4 The members of the Panel must be independent, i.e. they should not have had any involvement in activities related to FMO-Financed Operations for at least a period of two consecutive years nor are they allowed to be employed by or perform activities for DEG or FMO within two years after their term has ended.

3.4.5 The Panel is available for questions, information and advice. If needed, the Independent Expert Panel is authorized to hire experts. The Independent Expert Panel decides about the Complaint and responds to FMO and the Complainant.

3.5 Reporting & Transparency

3.5.1 It is important for FMO to communicate effectively about the Mechanism. An introduction and description of the procedure will be provided on FMO's website.

3.5.2 FMO will publish a register of admissible Complaints with statuses and outcomes (including follow-up on actions and recommendations) on FMO's website, taking into account privacy and confidentiality regulations and FMO's Disclosure Policy.

3.5.3 The Independent Expert Panel (assisted by the Complaints Office) will report annually to FMO's Supervisory Board on the Complaints. This report will be published on FMO's website.

3.6 Evaluation

3.6.1 The Independent Complaints Mechanism will be reviewed in case of e.g. new (international) laws, regulations or FMO policies and may be updated accordingly in due course. It will be revised immediately when needed and will at least be evaluated once every four years.

3.6.2 The Independent Complaints Mechanism was and will be developed in consultation with FMO's various stakeholders.

Appendix 1: Process flow of the Independent Complaints Mechanism

