

Independent Complaints Mechanism [FMO/DEG]

This policy is a joint document of DEG and FMO and the principles in this policy apply to both institutions, with the exception of differences due to dissimilarities in organizational structures and policies of both institutions. If this is the case the relevant text is put between brackets (i.e. []) and applies to DEG or FMO only.

Each institution will publish a clean version of the final updated policy at their respective website.

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[Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V.]
[DEG – Deutsche Investitions- und Entwicklungsgesellschaft mbH]

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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/DEG] and responsible for carrying out and implementing all or part of the [FMO/DEG]-Financed Operation.
Complainant	The External Party that is filing the Complaint.
Complaint	A written communication of an External Party addressed to [FMO/DEG] which claims that it has been or will be affected by a [FMO/DEG]-Financed Operation.
Complaints Office	Function performed by [FMO's Internal Audit employees / employees in DEG's Corporate Strategy and Development Policy Department], 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/DEG] have complied with the policies (as further specified in 2.3) that may be relevant for an Admissible Complaint.
[DEG-Financed Operation]	Any activity or any asset of the Client that is or is going to be financed by DEG funds or from funds administered by DEG in whole or in part, regardless of the nature of the financial instrument (loans, equity, project financing, grants, technical cooperation assistance and guarantees), but excluding DEG's participations in B-loans of institutions with similar complaints mechanisms.]
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/DEG] 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), but excluding FMO participations in B-loans of institutions with similar complaints mechanisms.]
ICM	Independent Complaints Mechanism
IEP	Independent Expert Panel
IFC Performance Standards	The environmental and social performance standards of the International Finance Corporation (IFC) 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. The Panel is fully independent of FMO and DEG.
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/DEG] introduces 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 a [FMO/DEG]-Financed Operation. In this way [FMO/DEG] strives to implement a robust and independent procedure and to communicate transparently about it to stakeholders.

1.1.2 The Mechanism provides stakeholders a tool, enabling alternative and pre-emptive resolution of disputes. At the same time the Mechanism assists [FMO/DEG] in implementing and adhering to its own policies and procedures and as such is a process from which lessons learned for future operations can be derived.

1.1.3 The Mechanism, including the Independent Expert Panel, is a joint initiative of the Deutsche Investitions- und Entwicklungsgesellschaft (DEG) and Netherlands Development Finance Company (FMO). All information in this document, except for references to [FMO/DEG] policies and procedures, is relevant for [DEG/FMO] as well. Both institutions use the same Panel and have a joint approach when Complaints relating to co-financed Clients are received.

1.1.4 The Mechanism is aimed to align with other [FMO/DEG] 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.]
- [The mission of DEG is to promote business initiative in developing and emerging market countries as a contribution to sustainable growth and improved living conditions of the local population. Environmental protection and compliance with social standards are decisive yardsticks for DEG to become involved.

- DEG's selection criteria are the common Environmental and Social Guidelines of the EDFI. These encompass the IFC Performance Standards and the stipulations of the Environmental, Health and Safety Sector Guidelines of the World Bank Group in their latest version as well as the conventions of the International Labour Organisation (ILO).]

1.1.5 As part of this responsibility [FMO/DEG] 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/DEG]-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/DEG]-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/DEG] 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 FMO has an extensive control and accounting structure with an internal audit function reporting directly to the Chief Executive Officer and the Supervisory Board of FMO. The Independent Complaints Mechanism is supported by a Complaints Office that is 'hosted' by the office of FMO's internal audit function.]

[1.2.3 The Independent Complaints Mechanism is supported by DEG's Complaints Office]

1.2.4 [FMO/DEG] strives that its activities respect national and EU policies and international standards.

1.2.5 [FMO/DEG] 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.

1.2.6 FMO and DEG are members 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/DEG] policies and other applicable standards;
- Provide advice and recommendations to [FMO/DEG] 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/DEG] towards all its stakeholders, the Mechanism offers Dispute Resolution (if possible) and Compliance Review.

2.1.3 The Mechanism applies to all [FMO/DEG]-Financed Operations¹. However, decisions concerning the investment mandate, its credit policy guidelines or other generic aspects (e.g. [FMO's/DEG'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/DEG] 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/DEG].

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/DEG]-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 / DEG's Compliance Unit and/or KfW whistle-blowing system] to determine the appropriate channel(s) for processing the Complaint.

¹ In 2014, [FMO/DEG] commenced introducing the necessary contractual arrangements to include the Mechanism's procedures in its financing and investment agreements with clients. If a Complaint relates to a case in which the necessary contractual arrangements are missing, the full implementation of the Mechanism's procedures will require the cooperation of all relevant parties. This includes, but is not limited to, allowing non-public information relating to the case at hand being shared with the persons involved in the Mechanism. The process of handling the Complaint may consequently require more time in order to establish and maintain the necessary cooperation, and the possibilities to process the Complaint in accordance with the procedures set out in the Mechanism may be restricted. In the event that the Complaint requires an approach which deviates from the Mechanism's procedures, the Complainants will be informed on a regular basis on the approach and the process that will be followed.

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 www.fmo.nl/policies_procedures and are (amongst others) based upon and/or guided by 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.]

[2.3.1 One element of the Mechanism is to review compliance of DEG's financing activities with DEG policies. In particular:

- a. DEG Guideline for Environmental and Social Sustainability;
- b. Environmental and Social Principles of KfW Banking Group;
- c. Environmental and Social Guidelines of EDFI; and
- d. Exclusion list.]

2.3.2 All policies are (amongst others) based upon and/or guided by 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.]

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3 Rules of Procedure

3.1 Complaint and admissibility

3.1.1 The Complaint by letter, e-mail and/or web form should be written in English or in an official language of the country of the Complainant or of the relevant [FMO/DEG]-Financed Operation. The response by letter and/or e-mail will be in English with – if applicable – a translation in the language of the Complaint. Processing of Complaints not submitted in English may require additional response 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;
- Where appropriate, an indication which [FMO/DEG] policy/policies has/have allegedly been breached;
- A clear description of the [FMO/DEG]-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/DEG] 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 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/DEG];
- The External Party must be affected or likely to be affected by an [FMO/DEG]-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/DEG] must have or will have an active financial relationship with the Client;
- There must be an indication of a relationship between the [FMO/DEG]-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 been taken place. This applicability will be determined by the Independent Expert Panel.

3.1.5 If the [FMO/DEG]-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;
- Identical Complaints aimed at Dispute Resolution that already are being handled by other high standard administrative mechanisms (being member of the network of Independent Accountability Mechanisms) or judicial review mechanisms or which have been settled by the latter. Identical Complaints that have been lodged with other mechanisms can be admissible for Compliance Review, but may be suspended while being under review by another mechanism. As indicated in paragraph 3.1.5 coordination and cooperation with other mechanisms will be aimed for.

3.1.7 Anonymous Complaints are not accepted. Nevertheless, without prejudice, a Complainant has the right of confidential treatment 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 a party's request for confidentiality (if applicable). The Mechanism will indicate publicly when it has restricted disclosure of information in response to such a request from a Complainant.

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 Complainant 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/DEG] 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.

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; it will review the relevant documentation and records; ensure coordination of the different [FMO/DEG] services involved and whenever deemed necessary will hold in-country meetings with the appropriate internal and external stakeholders, including the Complainant and Client, in order to gather the required information. The Panel will aim to finish the Preliminary Review within a reasonable timeframe, however the number of days to finish the Preliminary Review will depend on the complexity of the case and will be communicated to all parties involved,

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

3.2.7 After the Dispute Resolution phase the Panel prepares a report on the outcome of the process.

3.2.8 The Complaints Office ensures that the final report is published at [FMO's/DEG's] website.

Compliance Review Process

3.2.9 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/DEG] 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.

3.2.10 After the Compliance Review is closed, the Panel prepares a draft report that includes the allegations, findings and conclusions. The report may contain recommendations, if any, such as operational corrective actions and/or improvements to existing policies and/or procedures. The Panel sends the draft report to the concerned [FMO/DEG] services for comments regarding factual checks (to be received within 15 working days).

3.2.11 After receiving the comments regarding factual checks, the Panel will update the draft report as it deems appropriate.

3.2.12 Subsequently the Panel sends the (updated) 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.

3.2.13 The Panel will prepare a final report for disclosure to the Management Board and Supervisory Board of [FMO/DEG].

3.2.14 The [FMO/DEG] Management Board will provide a management response to the final report within 5 working days. This response should include any agreed corrective actions which require an implementation plan as well as a detailed timeframe for implementation.

3.2.15 The Complaints Office sends the final Compliance Review report to the Complainant(s) and informs the Complainant(s) about the [FMO/DEG] Management Board's response.

3.2.16 The Complaints Office ensures that the final report and Management Board's response are published at [FMO's/DEG's] website.

3.2.17 Effective and timely implementation of corrective actions will be strictly monitored by the Complaints Office. This follow-up on corrective actions will be conducted within 12 months after issuing the final Compliance Review report.

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/DEG]-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/DEG] 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 [FMO/DEG] 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, [FMO/DEG] will inform the Complainant duly within the predefined timelines. The following time constraints apply:

- An acknowledgement of receipt by [FMO/DEG] should be sent within five (5) working days after receipt of the Complaint;
- The Mechanism strives to decide on admissibility within 25 working days after acknowledgement of receipt;
- Reasonable timelines for the Preliminary Review, Dispute Resolution and/or Compliance Review will be decided upon and communicated on a case-by-case basis after consultation with the stakeholders.

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 and appointment of members of the Panel is the responsibility of [FMO's/DEG's] Chief Executive Officer [and will be approved by FMO's Supervisory Board / after consultation with DEG's Supervisory Board]. The members have diverse expertise (e.g. environmental, social, legal, financial). The members of the Panel must be independent, i.e. they

should not have had any involvement in [FMO/DEG]-Financed Operations related activities for at least a period of two consecutive years.

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 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/DEG] and the Complainant.

3.5 Reporting & Transparency

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

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

3.5.3 The Independent Expert Panel (assisted by the Complaints Office) will report annually to [FMO's/DEG's] Supervisory Board on the Complaints. This report will be published on [FMO's/DEG'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/DEG] 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/DEG's] various stakeholders.

Appendix 1: Process flow of the Independent Complaints Mechanism

