

Annual Report
DEG / FMO Independent Complaints Mechanism
July 2017 – June 2018

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Abbreviations

ICM	Independent Complaints Mechanism
IEP	Independent Expert Panel

Definitions

<i>Client</i>	The entity that is financed by DEG/FMO on the basis of a direct contractual relation and responsible for carrying out and implementing all or part of the DEG/FMO-Financed Operation.
<i>Complaints Office</i>	Function performed by FMO's Internal Audit function and by DEG's Corporate Strategy and Development Policy Department, respectively, which registers and acknowledges receipt of Complaints, coordinates adequate fulfilment of the Complaints process and provides practical support to the Independent Expert Panel.
<i>Compliance Review</i>	The process to determine whether DEG/FMO has complied with the policies that may be relevant for an admissible complaint.
<i>Dispute Resolution</i>	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.
<i>DEG / FMO-Financed Operation</i>	Any activity or any asset of the Client that is or is going to be financed by DEG/FMO funds or from funds administered by DEG/FMO in whole or in part, regardless of the nature of the financial instrument (loans, equity, project financing, grants, technical cooperation assistance and guarantees).
<i>Independent Expert Panel</i>	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.
<i>Mechanism</i>	Independent Complaints Mechanism
<i>Panel</i>	Independent Expert Panel

1. Introduction

1.1 Why and how the ICM has been created

As part of their commitment to act responsibly and transparently, in 2014, DEG and FMO established an Independent Complaints Mechanism to ensure that individuals, groups, communities or other parties who believe to be adversely affected by a DEG and/or FMO-Financed Operation have the right to be heard and the right to raise complaints with both institutions where they believe there has been a breach of the organisations' policies or procedures.

During the last three years the complaint mechanism was able to start working, investigating and finalizing the first cases brought to it. Based on the experience of the first cases which went through to full compliance review, and an exchange with both institutions and with civil society actors involved in the first cases, the policy of the ICM was updated. The revised policy now has adjusted and more realistic deadlines, a clearer definition of responsibilities between the Panel and the supporting secretariat units at DEG and FMO.

The panel started at a time, when complaint handling, remedy-mechanisms are becoming more and more important. Since the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) by the Human Rights Council in 2011, all business actors are encouraged to have a functioning remedy system in place as part of their overall human rights due diligence. The UNGP framework is relevant for DEG's and FMO's clients but also for banks and the banking sector in general. The UNGPs have also been taken up by the latest OECD Guidelines on Multinational Corporations as well as recent OECD guidance describing and explaining human rights due diligence in general and for specific sectors.

1.2 The Mechanism today

The ICM consists of the Complaints Offices of both institutions and an Independent Expert Panel. The Panel decides on the admissibility of each complaint and handles admissible complaints. The Independent Expert Panel currently has three members:

- Steve Gibbons
- Dr. Maartje van Putten
- Michael Windfuhr

The ICM adheres to good international practice and works in line with its policy and procedures available under <http://www.deginvest.de/icm> and <https://www.fmo.nl/independent-complaints-mechanism>.

This is the fourth annual report of the Mechanism. It covers the activities of the ICM from July 1st, 2017 until June 30th, 2018. The annual report is published simultaneously by FMO and DEG on their respective websites after having been submitted for information to their supervisory boards.

During the reporting period, the ICM finalized a Compliance Review with regard to a complaint related to the Sendou I project in Senegal. Furthermore, the ICM has been monitoring the follow up of

recommendations made in the Compliance Review report regarding the complaint related to the Barro Blanco project in Panama.

2. Complaint related activities

2.1 Overview of complaints received

During the reporting period no new complaints have been lodged.

		2018	2017	2016	2015	2014
DEG client	Inadmissible				1	
	Admissible					
FMO client	Inadmissible					1
	Admissible			2 *)		
Joint client	Inadmissible				2	1
	Admissible					1

*) Both complaints relate to the same FMO-Financed Operation.

2.2 Compliance Review Report on Sendou I (FMO client)

Sendou I is a 125 MW coal-fired power plant project near the town Bargny in Senegal. The ICM received two complaints in 2016 related to this project. *Takkom Jerry* and *Lumière Synergie pour le Développement* submitted the first complaint in May 2016, which the Panel declared admissible in July 2016. After that, the *Collectif des communautés affectées de Bargny* filed the second complaint in July 2016. The Panel declared the second complaint admissible in August 2016. All complainants are representing persons and groups allegedly affected by the project. The Panel decided to treat the two complaints as one case.

The complaints relate to similar alleged issues with respect to relocation and resettlement, air pollution and health issues and community consultation. Performing a Compliance Review process was deemed most appropriate to address the allegations made in the complaint. The Panel has, amongst other actions, visited the project site, held interviews with stakeholders involved and reviewed relevant documentation. The compliance review report was published in October 2017.

At the same time FMO issued a management response which summarized its reaction to three recommendations of the IEP as follows:

- **Recommendation 1 – Develop transparent rules and procedures aimed at ensuring that there is near real-time appropriate information provided to the inhabitants in a project area:** Stakeholder engagement is the responsibility of project companies, which are required to develop and implement a Stakeholder Engagement Plan in compliance with FMO standards. FMO aims to support its clients where it can, e.g. by offering advice based on best practices.

- **Recommendation 2 – Active support by appointing an independent facilitator:** FMO will offer the services of an independent facilitator to the affected parties in order to support the right and fair distribution of the committed funds among the different claimants.
- **Recommendation 3 – Support the delivery of safeguard decree for fish drying women in Barny:** FMO will offer the relevant parties support on delivering a safeguard decree that guarantees the right of the fish-drying women (“khelkom”) to continue their activities.

The Panel will evaluate the commitments made by Management one year after the publication of the Compliance Review Report.

2.3 Monitoring follow-up Barro Blanco (FMO and DEG client)

In May 2015 a Compliance Review report related to the complaint regarding the Barro Blanco Hydroelectric Project (BBHP) in Panama was issued by the Panel. The Panel has made a number of findings in relation to FMO and DEG. In accordance with the ICM Policy the Panel, supported by the Complaints Office, has monitored the implementation of the two remaining (out of 5 in total) actions committed to by FMO and DEG which required further follow-up during the course of 2016-2017. The monitoring report issued mid-2016 covered the first three action points. The two remaining action points for the institutions are:

4. Seek, together with the client, an acceptable environmental solution for the remaining small fraction of the total shoreline where access is still under discussion.
5. Ensure that explanation efforts related to flood levels continue and that water quality management and monitoring remain of significant importance and therefore subject to the Lenders’ ongoing reviewing of the project.

The Panel had direct contacts with the complainants, FMO and DEG on a regular basis through 2016-2018. The panel also reviewed the documents made available by both institutions, including monitoring reports.

The Panel notes a greater degree of direct engagement between FMO/DEG and the affected communities and the representatives of the Comarca Ngäbe-Buglé, including more regular communication.

However, the Panel wishes to express its extreme concern that following the test flooding the reservoir has started operation. Still several issues and steps need to be implemented such as the April 2017 agreement between the General Congress of the Indigenous Comarca and the Government of Panama, as well as the planned compensation measures as part of the forced easement process. The Panel understands that the primary responsibility for these have been taken by the Government and notes that FMO and DEG have made their position much clearer in relation to their expectations where third party action or inaction will impact on issues covered by their policies and the IFC Performance standards.

FMO and DEG have provided information that there had been a turbine repair process which required the lowering of the reservoir level. They report that repair works were completed beginning of June 2018, that since mid-June the reservoir level was allowed to increase again and that communities near the reservoir have been informed by Genisa of lowering measures of the reservoir. The time span of

the lowering of the reservoir has been used for biomass clearing activities. The Panel have not seen any independent verification of this information at the time of this report.

FMO and DEG also report that a social performance review will be undertaken in September 2018 by a consultancy company with the objective to identify opportunities for strategic social investment particularly related to Indigenous Communities to mitigate potential impacts whilst awaiting the agreed government actions.

The Independent Expert Panel has agreed to consider closing the ICM Monitoring of the Barro Blanco project under the condition that the measures mentioned above are sufficiently completed or addressed.

3. Other activities related to the Mechanism

3.1 Learning, Networking, Outreach

The ICM is a member of the global network of Independent Accountability Mechanisms (IAM) which facilitates networking and exchange of good international practice. ICM representatives took part in its annual meeting in Thessaloniki in August 2017.

To raise awareness of the institutions' staff of business and human rights issues and of the functioning of the ICM, in May 2018 a Panel member discussed with DEG's staff business responsibility within the context of the German National Action Plan for Business and Human Rights.

To promote the mechanism and to facilitate outreach, the ICM was also presented among others:

- At a meeting of German government, business and industry associations' representatives dealing with the German National Action Plan on Business and Human Rights in Berlin in April 2018,
- At a professionals' meeting dealing with international grievance mechanisms in comparison in Berlin in June 2018
- At a meeting with the Dutch Banking Association for a learning session between development banks and commercial banks on accountability mechanisms.
- At a meeting in April in The Hague organized by SOMO for both the International NGO community and several representatives of other mechanisms.

Furthermore, in order to improve the ICM's accessibility, the ICM policy has been published also in Spanish and French on FMO's and DEG's websites. Guides for complainants and clients are available as well. Based on its practical experience the ICM has developed operational guidelines which are to support the efficient use of procedures and resources by ICM experts and staff.

The guidelines also covered a further specification of the monitoring mandate. The Panel will perform a one-time evaluation of the commitments made 12 months after the final Compliance Review report is published. After the evaluation the Panel will issue a concluding Monitoring Report on FMO's/DEG's follow-up to the commitments made. After publication of the Panel's Monitoring Report, the ICM's mandate to monitor will end.

3.2 Composition of IEP

It has been decided that the members of the IEP shall rotate so that periodically one of the experts is replaced by a new one and contractual terms of the IEP members do not end simultaneously. It is assumed that this system is a safeguard against a sudden loss of know-how. Vacancies as a result of the replacements will be publically posted and will make sure to keep the mix of international experience in various fields like human rights and laws and sustainability.

3.3 Non complaint-related activities of IEP members

Apart from their services directly linked to individual complaints the IEP members engage in outreach activities for the ICM; such services belong to the contractually agreed list of tasks. During the reporting period IEP members rendered the following services to DEG and FMO:

Who	What	When	Where	Paid by
Dr. Maartje van Putten	IAM Network Annual Meeting	August 2017	Thessaloniki	DEG/FMO
Dr. Maartje van Putten	NGO's and other Complaints mechanisms meeting	6 April 2018	The Hague	DEG/FMO
Michael Windfuhr	Business and Human Rights. Discussion with staff	May 2018	Cologne	DEG

4. Events subsequent to reporting period

4.1 Extension of the ICM

There is an increased interest in the work of the ICM. In order to allow other European Development Finance Institutions access to the ICM, the Complaints Offices created the legal framework for such an extension. The French development finance institution Proparco joined the Mechanism in July 2018; Proparco's CEO Gregory Clemente made this public on July 19th, 2018. The ICM will be fully operational for Proparco beginning of February 2019.

4.2 Composition of IEP

Due to a policy of regular rotation of the membership of the Independent Expert Panel, in July 2018, FMO and DEG announced a vacancy of this position. At the time of closing this report, the related procedures were continuing