

**Annual Report**  
**DEG / FMO / Proparco Independent Complaints**  
**Mechanism July 2018 – December 2019**

**March 30, 2020**

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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/Proparco based on a direct contractual relation and responsible for carrying out and implementing all or part of the DEG/FMO/Proparco-Financed Operation.
<i>Complaints Office</i>	Function performed by FMO's Internal Audit function, by DEG's Corporate Strategy and Development Policy Department, and by Proparco's Risk 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/Proparco have 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/Proparco-Financed Operation</i>	Any activity or any asset of the Client that is or is going to be financed by DEG/FMO/Proparco funds or from funds administered by DEG/FMO/Proparco 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 DEG, FMO and Proparco.
<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 (ICM) 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 organizations' policies or procedures. Proparco joined the Independent Complaints Mechanism in February 2019 after signing a deed of accession in July 2018.

During the last years, the ICM investigated and closed the first cases brought to it. Based on the experience of the first cases, which went through compliance review, and an exchange between both institutions and civil society actors involved in the cases, the policy of the ICM was updated on January 1<sup>st</sup>2017. The revised policy includes more realistic deadlines and a clearer definition of responsibilities between the Independent Expert Panel (IEP) and the supporting complaints offices at DEG, FMO and Proparco.

The panel started at a time, when complaint handling and remedy mechanisms were 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, FMO's and Proparco's clients as well as 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 DEG, FMO and Proparco and an Independent Expert Panel. The IEP decides on the admissibility of each complaint, performs preliminary reviews to determine whether a complaint should proceed to the next stage, and when applicable, either performs a compliance review or supports a mediation in accordance with the ICM policy. The ICM also monitors the implementation of measures agreed upon to bring a project into compliance or agreed as outcome of a mediation process. The IEP currently has three members:

- 🔗 Steve Gibbons (until March 31, 2020)
- 🔗 Dr. Arntraud Hartmann
- 🔗 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>, [www.fmo.nl/icm](http://www.fmo.nl/icm), [www.proparco.fr/icm](http://www.proparco.fr/icm) and <https://www.proparco.fr/en/icm>.

This is the fifth annual report of the Mechanism. It covers the activities of the ICM from July 1, 2018 until December 31, 2019. The annual report is published simultaneously by DEG, FMO and Proparco on their

respective websites after having been submitted for information to their supervisory boards.

During the reporting period the following complaints related events took place:

- Regarding DEG complaints:
  - the ICM finalized a Preliminary Review report related to PHC (Feronia) in the Democratic Republic of the Congo (complaint was received in November 2018).
- Regarding FMO complaints:
  - the ICM performed monitoring regarding two complaints related to the Sendou I project in Senegal.
  - the ICM assessed the admissibility of one complaint and declared it inadmissible.
- Regarding FMO and DEG joint complaints
  - the ICM monitored the follow up of recommendations made in the Compliance Review Report regarding a complaint related to the Barro Blanco project in Panama.
  - the ICM finalized the preliminary review related to Lomé Container Terminals (LCT) in Togo (complaint was received in August 2018).
- Regarding Proparco: no complaints have been received since Proparco joined the ICM.

## 2. Complaint related activities

### 2.1 Overview of complaints received

During the reporting period no new complaints have been lodged.

Complaint number	Date of complaint	Receiving complaints office	Business sector	Country of DFI client	Status	Phase
14-001	05.05.2014	FMO	Energy	Panama	compliance report published	Monitoring
14-002	14.04.2014	DEG	Energy	Panama	compliance report published	Monitoring
14-003	14.11.2014	DEG	Energy	Cameroun	complaint admissibility denied	Closed
15-001	06.06.2015	FMO	Energy	Kenia	complaint admissibility denied	Closed
15-002	15.12.2015	FMO	Finance	Georgia	complaint admissibility denied	Closed
15-003	27.11.2015	DEG	Finance	Russia	complaint admissibility denied	Closed
16-001*	09.05.2016	FMO	Energy	Senegal	compliance report published	Monitoring
16-002*	15.07.2016	FMO	Energy	Senegal	compliance report published	Monitoring
18-001	22.08.2018	DEG, FMO	Logistics	Togo	complaint admissibility confirmed	Compliance review
18-002	05.11.2018	DEG	Agriculture	DR Congo	decision on mediation taken	Mediation
18-003	19.07.2019	FMO	Energy	Jordan	complaint admissibility denied	Closed

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

### 2.2 Monitoring Report on Sendou I (FMO complaint)

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. The second complaint was received, in July 2016 by the Collectif des communautés affectées de Bargny. The IEP 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.

In October 2017 a Compliance Review report was issued by the IEP. The report stated non-compliance findings in regard to environmental and social policies applicable to FMO financed projects. A first monitoring report which assessed actions taken to bring the project into compliance was completed and the monitoring report has been uploaded on the FMO ICM website. The main conclusions of the Monitoring Report are as follows:

- The IEP is concerned about the very limited progress made. It is difficult to understand why such standard processes such as ambient air quality monitoring, ground water monitoring and marine water monitoring have not taken place. While the plant at present is not operational, it has been operational in the past. Not conducting such monitoring is in breach of FMO Environmental and Social Safeguard provisions.
- A key outstanding issue are unresolved land disputes and impacts on women drying fish adjacent to the plant. The IEP recognizes that FMO has made efforts to encourage a mediation process to find a consensual solution to land related conflicts resulting from the required withdrawal from plots by households which had been allocated plots on the area where the Sendou Plant is located. The IEP finds it regrettable that the parties were not prepared to engage in a dispute resolution process as recommended in the ICM Compliance Review Report. The IEP considers it essential that FMO remains further engaged in helping to find a consensus-based solution.
- The IEP noted that no progress has been made in addressing pending issues in respect to economic activities of women drying fish in the immediate vicinity of the plant and noted the impact of the plant's activities on fish drying women.
- The IEP emphasized that, should the power plant return to operations, all non-compliance areas identified in the ICM report need to be addressed as a matter of urgency. Even if the coal-based power plant would not return to operations, ongoing environmental and social impacts of the plant structure would need to be addressed.

### **2.3 Monitoring follow-up on Barro Blanco (FMO and DEG complaint)**

In May 2015 a Compliance Review report related to a complaint regarding the Barro Blanco Hydroelectric Project (BBHP) in Panama was issued by the IEP. The IEP has made several findings in relation to FMO and DEG. In accordance with the ICM Policy, the IEP 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 2016-2017. The monitoring report issued mid-2016 covered the first three action points. The two remaining action points for the institutions are:

- Seek, together with the client, an acceptable environmental solution for the remaining small fraction of the total shoreline where access is still under discussion.
- 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 IEP had contacts with the complainants, FMO and DEG on a regular basis through 2016- 2019. The IEP also reviewed the documents made available by both institutions. In November 2019 FMO and DEG received an NGO letter (representing the complainants) on the Barro Blanco case.

Recognizing that there are significant differences of view on progress made and outstanding issues, the IEP decided that it will conduct a site visit for the final monitoring report.

## **2.4 Preliminary Review on Lomé Container Terminal (LCT) (FMO and DEG complaint)**

The complaint was received by the Complaints Offices of FMO and DEG on 28 August 2018. The complainants are a civil society organization called “Collectif des personnes victimes d'érosion côtière” (Collective of victims of coastal erosion) who represent a number of members of communities who claim to have been adversely impacted by coastal erosion, who live to the east of the port.

The complainants have suggested that the project has accelerated the erosion of the coast with negative impacts on their homes, livelihoods and communities. The complaint raises several questions in relation to both the due diligence carried out by FMO and other lending institutions and the quality of the Environmental and Social Impact Assessment. A complaint on this project has been filed with the Compliance Ombudsman Office (CAO) of the IFC in 2015 which raised issues also raised in the complaint to DEG and FMO. The CAO issued a Compliance Investigation Report on this complaint in August 2016. A second complaint regarding this project has been filed with the CAO in February 16, 2018 which raises different concerns. A dispute resolution process under the framework of the CAO is presently ongoing in respect to this second complaint. The complaint filed with the DEG and FMO relates to issues raised with the CAO in the first complaint but does not relate to the second complaint.

The IEP finalized the preliminary review of the LCT complaint and concluded that the complaint should proceed to investigation but that the ICM investigation will rely on the findings of the CAO compliance investigation report. The ICM investigation will not reassess compliance issues up to 2016 but will focus in its investigation on actions taken since the issuance of the CAO compliance investigation report. The ICM policy provides that in cases where complaints are filed with other complaint mechanisms recognized in the network of the Independent Accountability Mechanisms, that the ICM will cooperate closely with the other institution in order to avoid duplication (see 3.17 ICM policy). The ICM will thus cooperate closely with CAO in the upcoming compliance review investigation. The Preliminary Review Note has been uploaded on the websites of DEG and FMO.

## **2.5 Preliminary Review report on PHC (Feronia) (DEG complaint)**

The complaint was received by the Complaints Office of DEG on 5 November 2018. It concerns the DEG-financed operation Plantations et Huileries du Congo SA (PHC), a subsidiary of Feronia Inc. The complaint is asking that the ICM shall support a dispute resolution and mediation in relation to the various identified issues.

While the operation is also financed by FMO and other European Development Finance Institutions in a consortium and while FMO is also part of the ICM, the complaint was only filed with the DEG who is the consortium leader. Upon request of the IEP, DEG has confirmed that the case is treated as a complaint to DEG only.

In January 2019 the IEP published a Note of Admissibility and declared the case admissible. In

November 2019 a Preliminary Review Report related to the complaint regarding PHC (Feronia) complaint in Congo was issued by the IEP and published on the website of DEG. The IEP concluded that the complaint should proceed to a mediation process, provided engaged parties will agree to such a process. As part of the Preliminary Review Process the IEP verified

- the representation of the complainants and assessed the number of supporters to the complaint.
- issues raised in the complaint and verified and the relationship of these issues to the project funded by DEG.
- assessed previous attempts to resolve the dispute and any known barriers to resolution.

The IEP conducted two site visits in 2019 and confirmed that parties engaged in the conflict appear supportive of a mediation. Details of (i) who will be part of such a mediation, (ii) who is accepted as representatives of communities, (iii) what issues should be discussed, and (iv) a development of an understanding about potentially good outcomes will have to be addressed with all actors at the beginning and during the mediation process. A mediation plan is presently under preparation and under discussion with the parties. The IEP is holding discussions with relevant stakeholder in order to determine, when, where and with whom the mediation shall happen and to identify what would be potential results acceptable to the different stakeholders. The mediation plan will define the Rules of Engagement in order to secure an atmosphere of respect, security and trust and to determine rules for public communications and confidentiality.

### **3. Other activities related to the Mechanism**

#### **3.1 Learning, Networking, Outreach**

The ICM is a member of the global Independent Accountability Mechanisms Network (IAMnet) which facilitates networking and exchange of good international practice. The Complaints Office of DEG and Arntraud Hartmann (IEP) represented the ICM at the annual meeting of the IAMnet in Abidjan, Cote d'Ivoire in June 2019. They gave presentations on the structure of the ICM to other IAMnet members. The ICM structure which serves as a complaint mechanism to several bilateral financial institutions in different countries is innovative within the IAM network and is followed with great interest as other bilateral financial institutions are reflecting on an efficient and effective way to establish complaint mechanisms. ICM representatives gave an additional presentation to civil society organizations which attended a side event of the annual meeting of the IAM.

Furthermore, in order to improve the ICM's accessibility, the ICM policy has been published also in Spanish and French on the institutions' websites.

### **4. Events subsequent to the reporting period**

The following events took place after the reporting period:

- The monitoring report of the IEP on Sendou I was published in January 2020.
- The preliminary review report of the IEP on Lomé Container Terminal (LCT) was published in January 2020.
- IEP member Steve Gibbons decided to step down from the IEP at the end of March 2020.