



FISCALIA GENERAL DEL ESTADO



**MEMORANDUM OF UNDERSTANDING
ON EXCHANGE OF INFORMATION
BETWEEN
THE PUBLIC PROSECUTOR'S OFFICE OF THE KINGDOM OF SPAIN
AND
THE EUROPEAN INVESTMENT BANK (EIB)**

Preamble

Purpose

The purpose of this Memorandum of Understanding is to facilitate the exchange of information between the EIB and the Public Prosecutor's Office of the Kingdom of Spain, via the Anti-corruption Prosecutor's Office (hereinafter the "signatory institution" or "signatory institutions"), in the performance of their respective duties. The exchange of information is an important tool in terms of the measures undertaken by the signatory institutions to prevent, detect and address cases of fraud, corruption, collusion, coercion, money laundering and/or the financing of terrorism (collectively referred to as "fraudulent or irregular practices") in connection with their respective duties and operations, or, more generally, international activities.

Public Prosecutor's Office of the Kingdom of Spain:

The most recent version of the Organisational Statute of the Public Prosecutor's Office (EOMF) stipulates:

Article 1. The Public Prosecutor's Office is responsible for promoting the pursuit of justice in defence of the rule of law, the rights of citizens and the public interest as safeguarded by the law, whether ex officio or at the request of the parties concerned, as well as for ensuring the independence of the courts and seeking the satisfaction of the public interest before those courts.

Article 2. The Public Prosecutor's Office is a body under the Constitution of Spain with legal personality and is an operationally autonomous part of the Judiciary. It carries out its work via its own bodies, in line with the principles of coordinated action and hierarchical reporting, and always subject to the principles of legality and impartiality.

The Spanish Public Prosecutor's Office maintains specialised criteria as determinant for its internal organisation. This has led to the creation of specialised Prosecutor's Offices such as that for anti-corruption as per Article 19.4 of the EOMF:

The Prosecutor's Office against Corruption and Organised Crime shall perform the tasks outlined in Article 5 of this law and will be directly involved in criminal proceedings, in both cases in circumstances of special significance as judged by the Public Prosecutor, in relation to:

- a) Public finance, social security and smuggling offences
- b) Malfeasance offences
- c) Abuse or misuse of insider information offences
- d) Embezzlement of public funds
- e) Fraud and extortion
- f) Influence peddling offences
- g) Corruption offences
- h) Prohibited negotiation by public officials
- i) Fraud
- j) Bankruptcy fraud
- k) Price fixing in public tenders and auctions
- l) Offences related to intellectual property, the market and consumers
- m) Corporate crime
- n) Money laundering and conduct related to handling stolen goods, except for those falling under the responsibility of other Special Prosecutor's Offices due to a connection with drug trafficking or terrorism offences
- ñ) Corruption offences in international commercial transactions
- o) Private sector corruption offences
- p) Offences connected to the above
- q) The investigation of all kinds of legal affairs, transactions or movements of goods, securities or capital, financial flows or assets that appear to be connected to the activity of organised crime groups or to the economic use of criminal activities, as well as offences related to or determining these activities; except when falling under the responsibility of the Anti-drugs Prosecutor's Office or the National High Court due to a connection with drug trafficking or terrorism offences.

EIB:

As the financing institution of the European Union, the European Investment Bank (EIB), based in Luxembourg, is responsible for ensuring that the funds it provides are used for the purposes for which they are intended and that the operations and activities it finances do not give rise to acts of fraud, corruption, collusion, coercion, money laundering and/or the financing of terrorism. Under its anti-fraud policy, the EIB has a "zero tolerance" approach to such practices in its operations and activities. The Fraud Investigations Division of the EIB's Inspectorate

General (IG/IN) conducts administrative investigations into allegations concerning such practices in order to establish the facts and, if necessary, proposes preventive or corrective measures. IG/IN also works alongside the European Anti-Fraud Office (OLAF) and national authorities in their fight against fraud.

The following is agreed between the signatory institutions:

Exchange of information

1. As part of their respective investigations into fraudulent practices and related offences, the EIB, via IG/IN, and the Public Prosecutor's Office of the Kingdom of Spain, via the Anti-corruption Prosecutor's Office, agree to exchange relevant information as necessary and in accordance with their respective duties, policies and procedures.
2. Information exchanged between the signatory institutions to this Memorandum of Understanding shall at all times be considered strictly confidential and may not be disclosed outside the organisation for which it is intended, unless otherwise mentioned in paragraphs 3 to 6 below. For the purposes of this Memorandum of Understanding any consultants, advisers and other service providers serving or employed by EIB in connection with their investigations shall be considered as full staff members of the signatory institution receiving the information, being understood that the service provider in question undertakes to the EIB to treat such information with the utmost confidentiality and not to disclose it to third parties.
3. The duty of confidentiality arising from this Memorandum of Understanding shall not apply to information:
 - (a) which is public knowledge or generally accessible to the public in written form or any other permanent form at the time it is provided by one of the signatory institution the Memorandum of Understanding to the other;
 - (b) which is already known to the receiving institution at the time it is received or which is or becomes available without restrictions regarding its confidentiality from sources that are not subject to a duty of confidentiality;
 - (c) which the EIB is obliged to provide to the competent authorities of the European Union, in particular OLAF or the European Court of Auditors, pursuant to a treaty, law, regulation or specific agreement;
 - (d) which one of the signatory institutions of the Memorandum of Understanding is obliged to provide to a third party by order of a competent judicial authority or pursuant to a law or regulation, and for which it must comply with that order, law or regulation, after consulting the other signatory institution.

4. The signatory institution receiving information under this Memorandum of Understanding must consult the other signatory institution before disclosing the information fulfilling the criteria listed in paragraph 3. The signatory institution receiving the information shall be ultimately responsible for determining whether that information is disclosed in accordance with the provisions of paragraph 3 above.

5. If disclosure is necessary on grounds other than those provided for under paragraph 3 of this Memorandum of Understanding, this may not be done without the express written authorisation of the signatory institution that initially provided the information. Such authorisation shall not be withheld without a valid reason.

6. The source of the information provided by one of the signatory institutions of the Memorandum of Understanding to the other shall remain confidential and shall not be disclosed, unless (a) it falls within the scope of paragraph 3, or (b) whoever initially provided the information authorises the disclosure of the source. Such authorisation shall not be withheld without valid reason.

Operational cooperation

7. For their respective investigations into fraudulent and irregular practices and within the limits of their respective duties, policies and procedures, the Public Prosecutor's Office of the Kingdom of Spain, via the Anti-corruption Prosecutor's Office, and the EIB intend to assist each other, particularly with regard to meeting objectives and dealing with cases of mutual interest.

8. In that context, the Public Prosecutor's Office of the Kingdom of Spain, via the Anti-corruption Prosecutor's Office, and the EIB may provide for the possibility of rendering assistance to each other for their respective investigations and other operational activities.

Technical cooperation

9. Within the limits of their responsibilities and procedures, the signatory institutions, depending on the resources available to them, may provide each other with technical assistance, including the exchange of information on best practices and any technical information necessary to ensure good cooperation.

10. This exchange may include:

- technical investigation tools;
- methods for processing and analysing investigation data;
- information technology (IT) expertise or equipment for investigations.

Data protection

11. Any transfer of personal data by the EIB to the Public Prosecutor's Office of the Kingdom of Spain and the processing by EIB staff of personal data received from the Public Prosecutor's Office of the Kingdom of Spain shall be done in accordance with the requirements of Regulation (EU) No 1725/2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, as amended, supplemented or replaced from time to time.

12. Any transfer of personal data by the Public Prosecutor's Office of the Kingdom of Spain to the EIB, and the processing by the Public Prosecutor's Office of the Kingdom of Spain of personal data received from the EIB, shall be done in accordance with Spanish data protection legislation.

Staff exchanges and temporary secondments

13. The signatory institutions may, if they wish, conduct staff exchanges to promote cooperation between them, in accordance with the rules and procedures set out in the respective staff exchange policies of each institution.

Final provisions

14. This Memorandum of Understanding constitutes a good faith undertaking and does not create legal obligations between the two signatory institutions.

15. The signatory institutions may take any other suitable administrative measures needed to ensure efficient cooperation and coordination between the two organisations.

16. The signatory institutions may add any additional provisions for the application of this Memorandum of Understanding that may constitute an appropriate basis for their cooperation.

17. For the effective application of this Memorandum of Understanding, each signatory institution designates the following representatives as responsible for the supervision and the development of the cooperation and also acting as contact points:

- a. European Investment Bank, Head of the Fraud Investigations Division

Bernard O'Donnell
b.odonnell@eib.org
Tel.: +352 4379 89103

- b. Chief Anti-corruption Prosecutor, Anti-corruption Prosecutor's Office

C/ Manuel Silvela, 4. Madrid 28017
Fiscalia.anticorrupcion.fj@fiscal.es
Tel.: +34 91 5717415

18. Apart from the undertaking to guarantee confidentiality, this Memorandum of Understanding shall not give rise to any legally binding obligations. In particular, it shall not impose on either signatory institution any legally binding obligation to exchange information. In addition, the provisions of this Memorandum of Understanding cannot contradict or amend in any way the terms of the mandates applicable to each of the signatory institution respectively, nor their statutory rules or other relevant provisions.


19. This Memorandum of Understanding may be amended at the request of either of the signatory institutions. Each of the signatory institutions shall have the unconditional right to void this Memorandum of Understanding at any time upon three months' prior written notice. The termination of this Memorandum of Understanding shall have no effect on confidentiality obligations already entered into with respect to information provided prior to such termination.

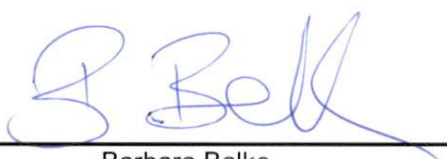
This Memorandum of Understanding is signed in four (4) identical copies, two (2) in English and two (2) in Spanish. While all four (4) copies are equally authentic, if there are differences in interpretation, the English text shall prevail.



Jan Willem van der KAAIJ
Inspector General
European Investment Bank
Luxembourg

Alejandro Luzón Cánovas
Chief Prosecutor of the Anti-Corruption
Prosecutor's Office





Barbara Balke
Deputy General Counsel
European Investment Bank
Luxembourg

Date: 04/07/2019

Date: _____