

Kafka's World:

The European Investment Bank's Information Policies

Updated version, September 2004

Introduction

As a public institution, NGOs believe that the European Investment Bank (EIB) should be open, transparent and accountable to the public, particularly concerning the projects it is financing. Timely access to information is essential regarding projects that can adversely affect people and the environment.

In practice the EIB should be fully accountable to the public of the EU member states, as well as the communities in other countries whose projects it may impinge on. Under the laws and practice of the European Union, and with the EU being a signatory to the Aarhus Convention on Access to Information, transparency is essential, and people have a basic right to know about procedures, operations and projects that are being considered for financing, as well as what happens during their implementation.

But the EIB has decided over many years to take a different approach, historically being very selective about the information it chooses to make available as well as when the information is made publicly available. Often it refuses to make publicly available any of the key project documents either before or after a project is approved. This secrecy does not allow affected people or interested NGOs to be fully informed and consulted prior to an EIB Board decision to approve a project.

This has begun to change slowly, with some information about most projects "in the pipeline" being available on the EIB website, a revised Information Policy in 2002, and release of a new Transparency Policy on June 15, 2004.

In October 2002 the EIB carried out a review of its Public Information Policy and later set up a mailbox where all stakeholders can post comments on its public information policy (infopol@eib.org).

However, NGOs have found the revision of the Information Policy unsatisfactory as it is filled with 'non-committal phrases' promising to release information 'whenever possible' and 'as early as feasible'. Release of information is at the complete discretion of the EIB and it still gives too much authority to project promoters to decide if information about the project for which they sought financing will be publicly released or not. Communities that are being adversely affected by EIB projects do not have the type of real access to information needed to protect their interests.

New Transparency Policy

NGOs are heartened by the recent EIB statement on promoting greater transparency, approved by the Board on June 15, 2004. If acted upon by Management and Staff, it could dramatically improve the situation.

Key commitments include:

1. The Board will undertake its first review of the operation of the 2002 Information Policy and Rules on Public Access to Documents later this year.
2. EIB aims to follow best practice in accessibility of information by making optimal use of electronic means, principally through its website.
3. EIB is examining ways in which its own governance could be further improved to demonstrate its commitment to best practice.
4. Mindful of the importance attached by EU policy-makers to successful implementation of the Lisbon agenda and its sustainable development goals, the EIB is closely following recommendations being issued on Corporate Social Responsibility that could be implemented in the EIB.
5. The draft "Aarhus Regulation" drawn up by the Commission in 2003 and recently approved by the Parliament will apply the provisions of the Aarhus Convention to all EU institutions and bodies.

EIB Information Policy

The EIB claims that the first objective of its Public Information Policy is to provide “as much information as possible” about how it operates and what it does. It regards its Information Policy as an “evolving and flexible process, subject to continuous evaluation and quality assessment.” It aims to “achieve a high level of transparency of its activities and communicate even more effectively with all stakeholders.”

During the past few years some NGOs have been pressuring the EIB to give the public full access to documents about its projects and relationships with the private sector. This has resulted in it reworking its information policy in recent years, with the last iteration having been released in October 2002, and the new Transparency Policy released in June 2004. Although these are steps in the right direction, in reality the project-related information accessible on the EIB web site still is often not detailed enough. In many cases, there is no documentation relevant to specific projects provided at all prior to a Board decision to approve the project. Too often project-related information is made publicly available only after the Board of Directors approves the project – which is too late for civil society organizations or people living in the project area to become involved.

The EIB’s 2002 Information policy states that relevant EU policies on transparency and public disclosure of information and other legislation are the main elements of the framework for its information policy. Yet it also puts a heavy emphasis on confidentiality regarding its lending. This is highlighted in its ‘Rules on Public Access to Documents’ adopted in 2002, including to:

1. Disclose information and documents whenever possible and to “respect the tenor and aims of the Aarhus Convention” within the context of the relevant EU legislation and the EIB’s operational framework;
2. Respect confidentiality in compliance with European and national regulations covering business contracts and market activity;

3. Respect the private commercial and market sensitive interests of its business counterparts;
4. Protect the privacy interests of individuals.

This 'balancing act' explains why the EIB continues to refuse to release relevant documentation in a timely way about most of the projects it is financing. In reality, the EIB keeps the public in the dark about most details until it is too late for a project to be changed, improved, or even rejected.

Being a public bank, using public money and governmental backing to support its existence and operations, provides a strong argument for the timely public release of information – as other EU institutions are increasingly doing. This conflict of interest between confidentiality regarding what it sees as private business interests and the public’s legitimate right to information disclosure raises questions about the EIB’s integrity as an EU body (See EIB fact sheet 2).

EIB Information Policy and EU law

The EU directive on Environmental Impact Assessments (EIAs) states that the public must be given access to information gathered and must have the opportunity to express an opinion before a project is initiated. The Aarhus Convention, adopted in 1998, gives the public additional broad and enforceable rights to access to environmental information. The EIB states that it “requests” promoters of projects to conform to Directive 2003/4/EC (Public Access to Environmental Information), and requires promoters of projects located in those countries where the Aarhus “Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters” (1998) applies, to “respect the Convention’s aims and principles.”

The EU regulation 1049/2001 obliges the Commission, the Council and the Parliament to release environmentally relevant information. The EIB claims that it fulfils this regulation but is not covered by it. To NGOs, this is a typical example of EIB double-speak.

The EIB claims that it “facilitates” public access to the Non-Technical Summary (NTS) of the EIA process through its Project list, at a time when this document is made available to the public and before disbursement. The same is theoretically true of the Environmental Impact Statement (EIS) for projects located outside the EU. In practice, NGOs both in the EU and outside have repeatedly been rebuffed in terms of obtaining the crucial project-specific data needed to evaluate a promoter’s claims and to provide alternative information in a timely way.

The Commission is currently working on new regulations, which should cover other EU institutions including the EIB. Eventually, action by the Commission may force the EIB to be bound to the same rules as other EU institutions.

If the EIB withholds information, it is possible to appeal to the European Ombudsman. Note that due to the restricted mandate of the Ombudsman this option is open only to EU citizens, and therefore discriminates against people in non-EU countries who are adversely affected by EIB projects. According to the 2002 EIB Information Policy, citizens can also complain to the EIB Secretary General. This possibility is currently being tested by NGOs. However, as an EIB staff member the Secretary General is not the equivalent of the Ombudsman, and nowhere near the Independent Inspection Panel of the World Bank or similar bodies at other IFIs.

Problems with EIB Information Policy

There are several key problems with the EIB’s current approach to providing the public with adequate and timely information:

Confidentiality of Projects in the Pipeline

In a welcome move, in 2001 the EIB started to publish a modest amount of information on projects in the pipeline on its website. It claims that in principle it publishes adequate information on most of the projects that it considers for financing. Yet at the same time, it acknowledges that project promoters may oppose the inclusion of material on the publicly accessible pipeline list due to

commercial confidentiality during the approval process. No one knows how many such cases there are, because even that information is confidential!

In almost every case in which NGOs have tried to obtain project-specific documents prior to EIB board approval – including environmental impact analyses, social evaluations and economic feasibility analyses – it has been refused by EIB staff, nor is this information typically made available even after project approval. This is one of the major complaints of NGOs.

This means that the financing of a project can be decided without public participation and excluding the main stakeholders of any project such as local communities that will be most affected by it. The EIB stated in June 2003 that they put information on the internet concerning about 70% of planned projects, yet it is impossible to verify this number, precisely because of the full lack of knowledge of ongoing projects. Sometimes there is not even prior public notification that the EIB is preparing a project.

This is in stark contrast to the World Bank and the European Bank for Reconstruction and Development, where key environmental information on projects in the pipeline is open to public access and comments, and where there are public consultations for projects raising serious environmental and/or social concerns.

Content of Project Information

According to the EIB each project published on its website contains a summary that provides the details, including the project promoter or financial intermediary, the location of the project, the sector it represents, a project description, its objectives, its environmental and social aspects, procurement data, proposed EIB finance, the total project cost and project status. Yet even when the data is available, it often amounts just to one page, with little information. Often certain crucial aspects are missing, such as specific environmental or social concerns that have arisen or at what level the EIA process will be implemented.

Nor are the results of public consultations made publicly available, even on the rare occasions when they take place.

Global Loans

Disclosure of Global Loans is the responsibility of the intermediary bank receiving the loan. Information during the deliberative processes for loan approval can be kept secret. Other important documents, such as those prepared by the implementing agency, and analysis of the likely environmental and social impacts of such loans, are kept secret from the public.

Global Loans can be positive, as they are a means of financing smaller and possibly more sustainable projects. Yet since there is no information given about what they are financing, and no environmental conditions on the loans, it is difficult to conclude that they are contributing to sustainable development.

Releasing EIA prior to Board Approval

The EIB still does not have a policy requiring the release of EIAs or other project-related environmental documents prior to Board Approval. This is compounded by public consultations often done after the approval process. The need for and results of an EIA process become absolutely meaningless once the project financing has already been approved. Moreover, the EIB leaves it to the project promoter to conduct the EIA process and release the related documents to the public. Even while national legislation in the EU may require an EIA, there is no evidence that the EIB is able to check EIA quality, given the inadequate staff resources allocated.

There is a need to have clear procedures regarding the EIA process, including timing of document release and public consultations. With the growing amount of EIB lending outside EU borders where there may be no such legislation, this becomes even more essential. At the World Bank and EBRD, an open EIA process for projects with substantial impact on the environment is mandatory before approval of a loan.

In addition to the serious inadequacies of the EIB Information Policy as it is interpreted and put into practice, its public consultation on projects fails to live up to modern procedures used by other similar international financial institutions. There need to be clear criteria and procedures for carrying out public consultations prior to project approval, yet this is left to the project promoter to decide on. In the project cycle, stakeholders are rarely properly consulted and little attention is paid to the concerns of critical members of local communities, nor are specific gender or ethnicity considerations taken into account.

To add to this, too little is known about the EIB's internal processes, making it much less transparent than other EU institutions. Minutes from project-specific meetings either at staff level or Board discussions on projects, key documents prepared for making decisions and the content of all EIB board decisions are unavailable to the public, giving the EIB an added layer of secrecy.

NGO Campaign on EIB Transparency

On June 3rd 2003, during the EIB Annual General Meeting, another call for greater transparency was made during an NGO demonstration outside the EIB headquarters in Luxembourg. The NGO called for EIB Governors and President Maystadt to make substantial changes in the Information Policy both as it is written and applied, demanding more transparency overall. In reply, the EIB released a 'briefing note' entitled 'EIB's transparent information policy' aiming to address the issues raised by the NGOs. The note clarifies the EIB's policy on access to information, however it does not change the fact that the policy is still very restrictive.

NGO Demands:

Release of all documents for projects in the Pipeline.

The EIB Information Policy should define a time period of a minimum 120 days prior to the Board decision for releasing project related information.

Applying Confidentiality for releasing information on projects in the pipeline.

All projects under consideration should be included in the Project Pipeline list on the website. At present, project information will not appear on the list if the project promoter opposes inclusion.

All environmental, social, and human rights impact assessments, debt impact analyses, and all other project-related information that is relevant to informing people about the project's risks should be disclosed prior to the Board's decision.

Content of Project Information Document.

The EIB should prepare and publicly release a Project Information Document for each of its projects. This should contain all important basic information about the project and include any environmental or social impacts that could arise as identified by the screening of the project. Environmental impacts should be thoroughly addressed, including the level of the EIA process and the result of public consultation when it is conducted. Analysis of social impacts should outline the impacts of the proposed project on affected individuals and communities, as well as measures considered for mitigating these.

The Document should also include details such as the expected date of the Board decision, the estimated date of signing the loan agreement as well as the contact details of the implementing agency and of the staff person at the EIB responsible for the project.

Global Loans.

Key documents used for the approval of global loans must be disclosed just as for other projects. All information pertaining to the global loan should be included, such as the implementing agency, the conditions attached to the loan, as well as possible environmental and social impacts and mitigation measures.

The intermediary banks receiving the loan should be obliged to follow the EIB's Information Policy, as they are making use of EIB funds.

Releasing EIAs prior to Board Approval.

A policy should be adopted that requires the release of EIA and other project-related environmental and social documentation prior to Board Approval of a project. Such documents should be made public 60 days prior to public consultations, both in English and in locally appropriate languages, which are easily accessible to stakeholders. Currently, such documents are only released after Board approval (if at all).

Monthly summary of EIB operations.

The EIB should meet the standards of other IFIs and publish a monthly summary of its operations, providing all details of the projects including environmental and social impacts as well as planned dates for decisions and approvals of applications. This would also include any new applications for projects.

Transparency of Bank Internal Processes.

The EIB should follow the 'best practice' of other IFIs and increase the transparency of its procedures and internal evaluations. This should include public release of the Staff Directory, with pertinent information on staff responsibilities and how the public can contact them. The EIB should also provide the public with Board documents, such as the Board's work plan, monthly calendars and agendas of meetings, and summaries of lending and policy discussions within the Board of Directors.

The EIB should release information related to the implementation of projects, including global loans, starting with mid-term project evaluations and final evaluations of project sustainability.

Further reading and information:

EIB Public Access to Information Documents: Information Policy Statement
http://www.eib.org/Attachments/strategies/pai_ips_en.pdf

How EIB communicates – an overview
http://www.eib.org/Attachments/strategies/how_eibcom_en.pdf

Code of good administrative behaviour for the staff of the EIB in its relations to the public
http://www.eib.org/Attachments/general/code_en.pdf

Rules on Public Access to Documents
http://www.eib.org/Attachments/strategies/pai_rules_en.pdf

EIB review of its public information policy
<http://www.eib.org/news/policy>

EIB information policy briefing note as reply to call for more transparency from NGOs
<http://www.eib.org/news/news.asp?news=58>

EIB Transparency Policy
http://www.eib.org/Attachments/strategies/transparency_en.pdf

EIB's Information and Public Disclosure Policy – reality check
http://www.bankwatch.org/publications/issue_papers/2003/eibagm_june/infopolicy_eib_06-03.html

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European Investment Bank fact sheets:

Fact sheet 1: *Invisible Power in the European Union: The European Investment Bank*

Fact sheet 2: *European Investment Bank: Basic Facts*

Fact sheet 3: *Kafka's World: European Investment Bank's Information Policy*

Fact sheet 4: *The European Investment Bank and the Environment*

Fact sheet 5: *The European Investment Bank's Role in Development*

Fact sheet 6: *Theory and Practice: European Investment Bank - Case Studies*

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