



Prague 13.11.2009

Dear Sir, Dear Madam

Taking advantage of the second opportunity within the policy revision process, we are submitting the following comments and recommendations for the EIB's consideration.

We would like to acknowledge that the number of our comments submitted in the first round was accepted by the Bank. We welcome the decision to merge the Public Disclosure Policy and the Transparency Policy into one coherent Transparency Policy, commitment to enhance case by case examination when receiving request for information as well as introduction of exceptions to disclosure based on the EU legislation.

General comments

### **1. Routine disclosure of environmental information by the Bank**

In EIB-supported activities, transparency can help to better achieve lending goals, reduce corruption, identify potential social, environmental and economic benefits, and avoid damaging communities and sensitive ecosystems. It is therefore crucial that information is released routinely and in a timely manner to allow interested members of the public and affected communities to take part in the decisions affecting them and the environment. There is need for routine disclosure of certain type of environmental information to **guaranteed that all interested members of the public have access to EIB's project relevant environmental information when the project is still under consideration by the Bank and/or public authority responsible for environmental assessment and development consent.**

EIB should routinely disclose information on anticipated environmental and social impacts of the project in a proper time **before the project approval.** As a minimum it should be one month before scheduled Board of Directors decision.

The following project information (documents) should be disclosed routinely on the EIB webpage:

1. Project Summaries
2. Environmental Impact Assessment (EIA) of the Project that includes Non-Technical Summary (NTS) or Environmental Impact Statement (EIS)
3. EIB's environmental and social assessments of projects
4. The Proposal of the Management Committee for the Board of Directors
5. A part of the Finance Contract referring to environmental and social conditions applied to the project
6. Reports from the monitoring missions
7. Project completion report or project evaluation reports

8. Justification for deviation from the EU standards implementation for projects outside EU (an document produced in implementation of p.40 from the Bank's statement of Environmental and Social principles and standards (ESPS))

9. Information about the stage of a loan disagreement.

We would like to raise your attention to some of these documents to demonstrate the need of such routine disclosure and show examples of policy requirements of other IFIs in that area.

a. EIB's environmental and social assessment. The current Policy does not allow for EIB's environmental and social assessment to be disclosed before the project is approved what contradicts the basic environmental and transparency standards adopted by other public financial institutions. The EIB's environmental and social assessment is a key document that shows compliance of the projects with EIB statement of ESPS. Often the EIB's own environmental and social appraisal is the only source of information on the project impacts when no EIA is available.

The Project Summary should also contain information about the project environmental and social impacts.

c. EIA, NTS/ EIS. The EIB ESPS point that the EIA process should be completed before project approval. It will be highly advisable if the Bank makes available the EIA report together with the Bank's own environmental and social information at least one month before the project approval.

The NTS and EIS should be disclosed prior to Board approval as envisaged by p.61 of Statement of ESPS. To ensure clarity about the implementation of that standard it is necessary that the Bank routinely make public NTS/EIS and link to the investors web site where this information is public. Unfortunately, we notice that 9 months after the approval of the new statements of ESPS often Environmental Impact Assessment Report and/or the Non-Technical Summary (NTS) are not available before the Bank approves the loan.

Finally we would like to highlight that the requirements we raise are common practice among financial institutions the EIB often cooperates with and it is key that the EU bank do not adopt standards that are lower than these. We would like to refer to European Parliament Resolution 2004/2212(INI) - point 30 *"Calls on the EIB to bring its activities into line with the International Finance Corporation with regard to the transparency of the projects for which support is provided"*

Some examples:

EBRD Public Information Policy (page 7):

*3.4.1 The Bank will make available Environmental and Social Impact Assessments on "Category A" projects in its Business Information Centre in London and in the relevant EBRD Resident Office at least 60 days prior to consideration of the project by the Board of Directors for private sector projects and 120 days prior to Board consideration for public sector projects. Notification of the documents' availability will be posted on the EBRD web site.*

International Finance Corporation Policy on Disclosure of Information (page 4)

13. *Social and Environmental Information.* IFC makes publicly available the following social and environmental information:

(a) *For each proposed investment (other than investments expected to have minimal or no social and environmental adverse impacts, or investments in financial intermediary (FI) projects, IFC issues a brief summary of its review findings and recommendations: the Environmental and Social Review Summary (ESRS). The ESRS includes the rationale for IFC's categorization of a project, a description of the main social and environmental risks and impacts of the project, and the key measures identified to mitigate those risks and impacts, specifying any actions that will need to be implemented to undertake the project in a manner consistent with the Performance Standards and are accordingly included in the client's Action Plan. Along with the ESRS, IFC will make available electronic copies of, and where available, Web links to, any relevant social and environmental impact assessment documents prepared by or on behalf of the client, including the Action Plan. The ESRS is released no later than sixty days, in the case of Category A projects, and thirty days, in the case of Category B projects, prior to consideration of the proposed investment for approval by IFC's Board of Directors (or other relevant internal authority).*

## **2. Project environmental information that is disclosed by the borrower**

The Environmental Impact Assessment process, in a meaning of the EIA Directive and according to EIB Statement on ESPS<sup>1</sup>, is a responsibility of the borrower. It seems it is a common practice adopted among different international public financial institutions. It puts on the borrowers certain obligations regarding transparency and public participation standards.

The Bank policy should describe clearly the standards that the borrowers should follow to respond to the obligations coming from the EU law and EIB statement on ESPS (p.63 and p.64) make clear rules for disclosure of the information that will enable public to demonstrate how borrower is implementing that standards.

Although the EIB's Statement on ESPS oblige the borrower to conduct EIA according to the EU EIA Directive (irrespective of the country the project is located), the Transparency Policy does not oblige the borrower to disclose environmental and social information regarding the project. It is an existing problem as practice show that borrower can refuse to disclose Environmental Impact Assessment Report. Within the EU it is also possible to obtain the information (EIA report and consents) from the relevant authorities, however on the basis of the information available from the Bank one is not able to identify the competent authority (in one country can be thousands of authorities that are competent to conduct EIA). The Bank should follow in this regards practice used by other IFI's like EBRD and IFC that oblige the borrowers to disseminate and disclose project impacts information. When the Bank co-financed project outside the EU with other IFI's the transparency and public participation (as parts of the EIA process) are safeguarded by the policies of these

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<sup>1</sup> p.63 from ETPS - For all projects for which the EIB requires a formal EIA, the promoter should conduct a meaningful, transparent, and culturally appropriate public consultation of affected communities and provide for a timely disclosure of appropriate information in a suitable form; there should be evidence that the views expressed have been considered. For all other projects, the Bank requires promoters to engage stakeholders in meaningful dialogue, as a citizens' right and to build support for efficient and timely project implementation

IFI's (often World Bank and EBRD). However when the Bank stands alone, there are no safeguards whatsoever provided by the EIB to ensure that project affected persons were informed and properly consulted regarding the project and have access to the project related environmental information during the whole project life. In its Policy the Bank admits that "weak governance, corruption and lack of transparency are a major issue in some of the regions in which EIB operates and acts a serious brake on economic and social development" (point 9.2), however it does not provide any procedure that would safeguard listed weaknesses. The Bank should ensure in its Policy, that direct access to environmental information regarding the project is available for everyone from the Bank and from the borrower during the whole project life. All projects financed by the Bank should comply with the same transparency and public participation standards irrespectively of their location and the borrowers approach to information disclosure

Examples:

EBRD Public Information Policy (page 7):

*3.4.3 The disclosure of project information is the responsibility of clients. The EBRD requirements for disclosure of project information by the client are contained in the EBRD Environmental and Social Policy.*

EBRD Environmental and Social Policy (page 70):

*Information disclosure*

*12. Disclosure of relevant project information helps stakeholders understand the risks, impacts and opportunities of the project. If communities may be affected by adverse environmental or social impacts from the project the client will disclose to them the following information ("the Information"):*

*the purpose nature and scale of the project*

*the duration of proposed project activities*

*any risks to and potential impacts with regard to environment, worker health and safety, public health and safety and other social impacts on communities, and proposed mitigation plans*

*the envisaged consultation process, if any, and opportunities and ways in which the public can participate*

*time/venue of any envisaged public meetings, and the process by which meetings are notified, summarised, and reported.*

*13. The Information will be disclosed in the local language(s) and in a manner that is accessible and culturally appropriate, taking into account any vulnerable people (for example ethnic groups or displaced persons). For projects with potentially significant adverse social or environmental impacts, disclosure should occur early in the environmental and social appraisal process.*

### **3. Transparency of the governing bodies of the Bank**

We welcome the EIB commitment to improve the transparency of the work of its governing bodies. We would like to suggest that the Bank consider to refer to Council of European Union procedures regarding access to Council documents and transparency of the Council work. We propose that the EIB publishes agendas (as it is already practiced by the Bank) and minutes from the Board of Directors meetings subject to confidentiality provisions as described in the Policy. We encourage to refer to the Council procedures especially in relation to information concerning the Board of Governors which also consist of Ministers from the Member States. The EIB

should make public a provisional agenda of the Board of Governors meeting, background documents and minutes from the meeting subject to confidentiality provisions. Individual statements by the Member States should also be made public unless there is a compelling reason for confidentiality. The Policy should include separate provisions regarding access to information about the Bank's governing bodies work.

Examples:

EBRD Public Information Policy (page 3):

*1.3 Board minutes. The Bank will release minutes of meetings of the Board of Directors which will contain the following: (i) the names of attendees; (ii) a record of the approval of the minutes of the previous meeting; (iii) titles of the agenda items; and (iv) agreements and decisions reached.*

International Finance Corporation Policy on Disclosure of Information (page 7)

*22. Corporate Governance Information.*

*(...)*

*(c) Minutes of formal meetings of IFC's Board of Directors (other than Executive Sessions) are publicly available after the Board has approved them. Material in such minutes that is deemed by IFC's Board of Directors to be confidential or sensitive will be redacted before disclosure. The minutes typically contain the following information: (1) names of the persons present at the meeting, (2) record of the approval of the minutes of previous formal Board meetings, (3) titles of agenda items, (4) agreements and decisions reached, and (5) names of Directors wishing to be recorded as abstaining or objecting. The Corporate Secretariat of the World Bank Group prepares these minutes.*

#### **4. Intermediary loans**

At a time when regulators are discussing to increase transparency for the financial sector operations to avoid new systemic financial crises to happen, the refuse of the EIB to allign its policies and practices with this trend would be in contradictions with the general position on transparency of private financial institutions by its main shareholders sitting in the G20. The current push by this forum for the increase of transparency concerning offshore financial centres and secrecy jurisdictions is a clear example of this positive trend, which has been partially reflected in the new interim policy of the EIB on OFCs. Thus more has to and can be done in terms of improving soon transparency of global loans to private financial intermediaries and the current policy review offers an important opportunity.

Financial intermediaries have had a growing and growing importance in delivering EIB support, in particular in ACP and other Southern countries, while following a trend common to all main MDBs. Therefore it is very questionable the passive attitude hold by the Bank in not challenging more some of its primary beneficiaries by requesting basic public transparency requirements concerning the assessment and use of the loans. In particular when EC guarantees are involved in project financing – and the use of these has also been growing more and more in the last years - it is a matter of principle to increase public disclosure of information – both ex-ante and ex-post – given direct or indirect use of taxpayers money.

Given constraints existing in some legislations on disclosure of information in European countries, as a minimum the EIB might request that all those financial intermediaries benefiting from its support should adopt a disclosure of information policy in compliance with international good practices in this regard. The Bank might easily create a public registry in this regard. Counter Balance believes that this would be a legitimate condition given that public support awarded to private financial actors is already in itself a violation of level playing field in financial markets, as often recognised by the European Commission. Therefore this support should be qualified and made it more accountable against wider general public interest goals.

Furthermore, Counter Balance reiterates requests by the European Parliament in their report about EIB activities in 2007<sup>2</sup> that the EIB should improve its transparency considering global loans to financial intermediaries.

In October 2008 the Bank announced improvements in transparency of its global lending to the financial intermediaries. However this commitment had no impact on the Policy. At the minimum the Bank should be able to provide information on individual allocations made by local banks to support investment in category A and B projects which require Environmental Impact Assessments. The public should be informed about all the projects supported by EIB that might have negative environmental impact. The intermediary institutions' financial risk should not influence the EIB responsibilities as EU institution in disclosure of environmental information. All the information that EIB holds should be subject to disclosure, unless it falls under exceptions to disclosure. EIB should not introduce more exceptions than it is already included in the relevant EU legislation.

#### **5. The principles of exception allowing refusal of disclosure should be unequivocally addressed in the new policy.**

We welcome the inclusion of the EU Directives 1367/2006 and 1049/2001 in Part A-Principles, section 5.2. We regret to see, however, that those principles are not respected in the second part of document "Practices".

In 4.3.2 we read "Certain private sector projects are not published before Board approval and, in some cases, not before loan signature to protect justified commercial interests."

Principle 5.2.3 notes that commercial interest is protected only when there is no overriding public interest and only if the information is not related to emissions to the environment. In principle 5.2.11 the policy also refers to partial disclosure of information where the confidential part is removed. Therefore we see contradictions among 4.3.2 (par.2) and principles 5.2.3. vis a vis 5.2.11.

We ask the EIB to carefully review also other parts of section B for other cases that undermine principles of exceptions for refusing disclosure.

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<sup>2</sup> European Parliament resolution of 25 March 2009 on the 2007 Annual Reports of the European Investment Bank and the European Bank for Reconstruction and Development ([2008/2155\(INI\)](#)) art.8.Urges the EIB better to monitor and to make transparent the nature and final destination of its global loans in support of SMEs;

The EIB also should strengthen its provisions for exceptions to the disclosure of third-party documents. In line with the Global Transparency Initiative's Transparency Charter for International Financial Institutions, exceptions should be based on the harm that disclosure would cause, not on who produced or provided the information. While third parties should have the right to make representations as to why a particular piece of information falls within the scope of exceptions, as defined by EIB policy part A-Principles, they should not be allowed a priori a third party veto or recognised an originator control principle.

### **Detailed comments to Transparency Policy**

1.

*1.3.1 The Transparency Policy is guided by openness with the underlying presumption that, whenever possible, information concerning the Bank's operational and institutional activities will be made available to third parties (the public) in the absence of a compelling reason for confidentiality, in line with EU legislation, those of the EU Member States and countries of operation and internationally accepted principles.*

The Bank, as EU institution should refer to applicable EU legislation. EU MS and countries of operations legislation do not apply to EIB as EU institution. Moreover it is doubtful that EIB will be able to analyse particular country legislation when deciding about disclosure of information.

2.

*1.3.2 (...)In order to support the principle of transparency, the Bank seeks to provide accurate and timely information regarding its operational activities.(...).*

In order to enhance this principle we recommend that EIB routinely publish information, as listed in point 1 of General comments, before the approval of the loan. This will allow the public to understand decisions taken by the governing bodies of the Bank.

3.

*1.4.2 The EIB is committed to give stakeholders access to the information that will enable them to understand its governance, strategy, policies, activities, practices, performance, impacts and outcomes with a view to allow stakeholders to take their actions and decisions on an informed basis.*

In order to fulfill this commitment the Bank should routinely disclose project information before decisions of the Board of Directors. Current version of the Policy does not allow stakeholders to take their actions and decisions on an informed basis. The information is disclosed too late and usually only on request.

4.

*1.7.1 In its financing operations, the Bank recognises the rights, interests and responsibilities of stakeholders to achieve sustainable outcomes. In this context, the EIB actively promotes transparency with its counterparts, including with the development and operations of financed projects.*

The Bank should introduce more detailed transparency obligations towards its business partners. Disclosure of the environmental and social information should be an obligation of the borrower, as it is an internationally-recognised standard which the Bank refers to in its Policy.

5.

*5.1.3 Language regime: To promote the accessibility of information, the Bank is committed to a language regime that takes into account the public needs. EIB's statutory documents are available in all official EU languages. Other key documents with a particular importance for the public, such as this Policy itself, are also published in all official EU languages, while others are available in, at least, English, French and German. Translation into other languages can be considered whenever a wide interest arises for a particular document.*

While the Bank operates also outside European Union, it should consider Russian language as equal to others EU languages. This will enable a huge number of EIB stakeholders to understand the Bank's documents (other big regions where EIB operate uses EU languages, like French, English, Spanish, Portugal). The Bank should possess and disclose environmental and social information in a working language of the Bank as well as in the language that is used at the place of the EIB operation. The current Policy (and also practice) shows that the Bank does not hold all of the Environmental Impact Assessment Reports (and Non-Technical Summaries) in a working language of the Bank what raise question about the EIB's appraisal process. On the other hand it is not enough to provide information only in the EIB working language which may not be understandable for the persons affected by the project. The Policy does not oblige EIB to possess (and disclose) information in local language, neither it oblige the borrower to disclose information in a local language. Therefore the Policy should stipulate that project related information are available in both: Bank's working language and in the language used at the project site.

6.

*5.2.10 Exceptions also cover information on individual allocations made by local banks to support investment by their own customers under credit lines established with the EIB. This information falls within the competence of the intermediary bank as part of the normal business relationship between a bank and its customers. However, the EIB encourages the intermediary bank to make available information covering its relationship with the EIB.*

This provision does not comply with the presumption of disclosure applied in this Policy. The Bank should not introduce more exceptions than those based on relevant EU legislation. EIB should not exempt "a priori" certain information from disclosure but allow for case by case examination. The involvement of the financial intermediary does not change the fact that final beneficiary is granted EIB loan. Taking into account that Global Loans constitute a significant part of EIB lending, the EIB should improve the transparency of this type of lending instead of making it even more confidential. The EIB should make available aggregated data, including environmental and social conditions, type of final beneficiaries and type of investments made. All subprojects of category A or B, together with relevant environmental documents should be made public on the EIB web page. Financial intermediaries should be required in the Financial Contract to inform final beneficiaries about the EIB and its policies.



Especially at the time of financial crisis, when regulators are discussing to increase transparency for the financial sector operations to avoid what happened with the crisis, the Bank should align with this trend and propose more ambitious transparency regulation. Counter Balance study showed that in the last five years, the EIB has loaned EUR 5.66 billion to top tax haven using banks from the UK, France and the Netherlands (Société Générale, Barclays, BNP Paribas, RBS, ING), while EUR 210 million has gone to African funds using tax havens in their strategies. More advanced transparency regulation and monitoring practices will help the EIB to make a convincing case that its money is being well-used according to its policy on fraud and corruption.

7.

*9.2 Weak governance, corruption and lack of transparency are a major issue in some of the regions in which EIB operates and acts a serious brake on economic and social development. The EIB actively promotes transparency and good governance in the projects it finances, in the companies it participates and generally with its counterparts.*

Although the EIB's Statement on Environmental and Social Principles and Standards oblige the borrower to conduct EIA according to the EU EIA Directive (irrespective of the country the project is located), the Transparency Policy does not oblige the borrower to disclose environmental and social information regarding the project. It is an existing problem as practice show that borrower can refuse to disclose Environmental Impact Assessment Report. Within the EU it is also possible to obtain the information (EIA report and consents) from the relevant authorities, however on the basis of the information available from the Bank one is not able to identify the competent authority (in one country can be thousands of authorities that are competent to conduct EIA). The Bank should follow in this regards practice used by other IFI's like EBRD and IFC that oblige the borrowers to disseminate and disclose project impacts information. When the Bank co-financed project outside the EU with other IFI's the transparency and public participation (as parts of the EIA process) are safeguarded by the policies of these IFI's (often World Bank and EBRD). However when the Bank stands alone, there are no safeguards whatsoever provided by the EIB regarding the project and have access to the project related environmental information during the whole project life. The Bank should introduce a procedure that would be applied to every project irrespective of the country it is located.

8.

*9.4 The Bank requests the project promoters to follow the transparency principles detailed in this policy in the context of the financed projects.*

See the comment from point 7. The Bank should oblige the borrower to disseminate and disclose project environmental and social impacts information.

9.

## *2. CORPORATE GOVERNANCE*

In this section the bank should introduce provisions related to its institutional transparency regarding the work of the Board of Directors and the Board of

Governors. See General comments nr 3 “Transparency of the governing bodies of the Bank”.

We propose the following articles to be included in the policy:

*2.1 The bank shall publish on its website the annual calendar of the Board of Directors meeting. At least 14 days in advance of the Board of Directors meeting, the Bank shall publish the agenda of the Board meeting. The agenda should list the individual financial activities proposed to the Board for approval as well as plans or programmes relating to the environment and institutional documents of public interest of the Policy which are proposed to the Board for approval.*

*2.2 The results of votes and explanations of votes by members of the Board of Directors, as well as their statements relating to the adoption of the plans or programmes relating to the environment and institutional documents of public interest, shall be made public*

*2.3 The Bank shall publish on its website the minutes of the Board of Directors meetings subject to the disclosure constraints listed in the Policy. The minutes shall as a general rule indicate in respect of each item on the agenda: the documents submitted to the Board of Directors and the decisions taken or the conclusions reached by the Board, the statements relating to the adoption of the plans or programmes relating to the environment and institutional documents of public interest*

*2.4 The Bank shall publish on its website information about the Annual Meeting of the Board of Governors. The Bank shall publish the agenda of the Board of Governors meeting at least 14 days before the meeting. The agenda shall be accompanied by the supporting documents for the Board of Governors meeting.*

10.

*4.1.2 The Bank shall decide which documents to publish, through its Website and/or on paper form, and which documents are available on request only. Documents that are considered of general public interest, which could interest a large number of stakeholders and/or members of the public, will be published.*

Routine and timely disclosure of the project environmental and social information is one of the most significant weakness of the EIB policy. See our general comment no 1 Routine disclosure of environmental information by the Bank. Taking into account the spirit of Aarhus Convention transposed through Regulation 1367/2006 (so called Aarhus Regulation) and internationally recognised standards shared by similar institutions, the Bank should really make efforts to active disclosure of project related environmental and social information on its website. In the current practice information disclosed on request is released too late to allow for constructive public participation, including EIA process and the EIB project cycle.

11.

*4.2 The Bank discloses Framework Agreements on request, unless the Country concerned has formally opposed to such disclosure. The Partner Countries will be informed of the Bank's policy in this respect.*

Disclosure of FA should be governed by the general principle of disclosure taking into account exceptions that might be applicable. The Country concerned

disagreement to disclosure should only be justified on the exceptions as applied in the Policy.

12.

*4.3.1 The “Proposal from the Management Committee to the Board of Directors” for financing a project is not released before approval by the Board of Directors.*

Taking into account the content of the “Proposals from Management Committee...” released by the bank on request, such documents should be routinely disclosed at least 30 days before the Board consideration. Confidential information should be deleted from the published document.

The “Proposals from Management Committee...” disclosed previously by EIB included general information regarding (usually not more than only 2 page): description of project, financial proposal (amount of loan, co-financiers, project promoter, project term, security conditions, MS opinion, Commission opinion, financing plan, information on approval process); Value-added identification; Key environmental, social, procurement issues; Risks and mitigation and information on previous relation with borrower/promoter.

Active disclosure of this information will allow the stakeholders to understand the Bank’s decision-making process and operations.

13.

*4.3.2 All public sector projects are included on the Project List on the Bank’s website prior to Board approval, as are all private sector projects when there has been a call for international tender published in the Official Journal of the European Union and/or which have been subject to an Environmental Impact Assessment (EIA).*

The Policy should state the exact period of time when before the Board approval the project are included on the Project List. It should be minimum 30 days and it should apply to all considered projects. Also it is not enough just to publish the Project Summary, but the Bank should also publish at that time information on environmental and social impacts of the project as well as EIA document. The Project Summary does not contain basic information about the project impacts and therefore does not allow the stakeholders to make decisions on their participation in environmental decision-making ( or raise concerns directly to the Bank before ultimate decisions are taken). See also general comment no 1.

This document dated 13.11.2009 was prepared by CEE Bankwatch Network, Global Transparency Initiative and Counter Balance Coalition