



Prague 22. 07.2009

Dear Sir, Dear Madam

We welcome the EIB's decision to review its Transparency and Public Disclosure Policies and especially the two-rounds process which provides opportunities for a wide spectrum of stakeholders to contribute to the process.

Taking advantage of the opportunity we are submitting the following comments and recommendations for the EIB's consideration. In the preparation of this document we referred to the standards and practices of similar international financial institutions, like the International Finance Corporation, World Bank, European Bank for Reconstruction and Development as well as the relevant EU legislation, such as Regulation 1367/2006 on the application of the Aarhus Convention to EC institutions and bodies and Regulation 1049/2001 on Public Access to European Parliament, Council and Commission documents. We also base our comments on the principles prepared by the Global Transparency Initiative: "Transparency charter for International Financial Institutions: Claiming our Right to Know"¹.

In our opinion transparency and access to information are crucial for achieving the EIB's mission. 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 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. It is also very important that the EIB ensures that relevant information is disseminated among impacted communities in a proper manner and in time to enable them to take part in public consultation and environmental impact assessment where applicable as well as to raise concerns with the Bank when all options are still possible. The EIB should also realize that transparency, which leads to fostering public ownership of projects, is necessary for fulfilling the Bank's development mandate outside the European Union.

General comments on the Transparency and Public Disclosure policies

1. In our opinion the EIB should consider the fusion of the two policies, Transparency and Public Disclosure, into one coherent document that includes transparency principles and standards as well as detailed disclosure procedures.
2. In its Transparency Policy, the EIB refers to international standards however without specifying which standards it refers to. It should list the international standards it refers to.

¹ http://www.ifitransparency.org/doc/charter_en.pdf

3. The Bank should ensure that it holds and provides access to all information and documents about operations that it is involved in, especially environmental and social information like environmental impact assessments, environmental management plans, economic, affordability, and cost-effectiveness analyses or resettlement plans. The EIB should make the documents publicly available or provide a webpage link to or information about the place where the document can be found (for example from the Project Promotor).
4. Commercial and other partners' willingness to cooperate with the Bank should not drive the bank's transparency and disclosure policies. On the contrary, all partners should be aware of the specific character of the EIB as a public financial institution that adheres to standards shared by other public financial institutions. Partners should accept this and comply with these standards. In particular, the fact that the EIB is considering financing a project must not be treated as confidential or market sensitive information and all projects that are under consideration should appear in the EIB webpage pipeline before their approval. For example, although the IFC deals only with private clients, it always publishes information on projects before their approval. Taking into account the objective character of "commercial information", the EIB should not use this as an excuse for non-disclosure of some projects before the loan is signed.
5. The Bank should make efforts to make more information available on its website automatically, on a routine basis, especially Bank's own environmental and social assessment of the operation. Therefore we propose that the formulation of the presumption of disclosure principle (point 65 of the Transparency Policy): "*All information held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure*", be changed to: "***All information held by the Bank is subject to disclosure, unless there is a compelling reason for non-disclosure***"
6. Moreover EIB should not only encourage Project Promoters to disclose environmental and social information regarding operations, but it should require from the borrower that information be disclosed and disseminated in a proper manner and language, taking into account the conditions where the project is located. Environmental and social information should be actively disseminated before project approval by the Board of Directors. In case of Public-Private Partnership projects EIB should require Project Promoters to disclose: (a) the affordability assessment including a full assessment of the risks for users, taxpayers, workers and the government, including if the project fails; (b) the Public Sector Comparator (PSC) calculation, along with an explanation of the methodology; (c) draft PPP contracts; (d) tender documents, bids and contracts, including financial details.
7. The EIB itself should ensure that it undertakes decisions in a transparent way. The results of the EIB's own environmental, social and economic assessment (Appraisal Report) should be available to the public in advance of the ultimate decision of the Board of Directors (approval). Only timely information provided to the public and affected communities will enable them to understand EIB operations, accept them or raise the alarm in case they feel negatively impacted or there are serious problems related to particular operations.
8. The EIB must also significantly improve the transparency of its governing bodies. The decisions of the Bank's governing bodies, Boards of Directors and Governors, constitute public information. We propose that the EIB publishes minutes from the

Board of Directors meetings that include a list of decisions made and the reasoning. In terms of transparency of the Board of Governors we recommend that the EIB adopts the procedure used by the Council of European Union which also consists of ministers of the Member States. The EIB should make public a provisional agenda of the Board of Governors meeting, background documents and minutes from the meeting. Individual statements by the Member States should also be made public unless there is a compelling reason for confidentiality.

9. The current policies provide the possibility of vetoing the disclosure principle for commercial partners, Directors and partner States (concerning Framework Agreements). In such cases a presumption of disclosure should also apply and each veto should be reasoned on the basis of compelling reasons for confidentiality. Narrowly defined exceptions should apply. No information should be made confidential without providing a justification for the confidentiality applied.
10. The regime of exceptions should be based on the principle that access to information may be refused only where the EIB can demonstrate that disclosure would cause serious harm to narrowly defined, listed interests and that the harm override the public interest in disclosure. In the policy text EIB should explain that the exceptions only apply to specific information contained in the documents, not to the documents as such. Confidential information may be removed and the document released.
11. The EIB should change its definition of “commercial interest”. The current draft of the PDP assumes that “commercial interest” covers information agreed between the EIB and counterparts to be confidential, no matter whether the disclosure would undermine the interest of the counterpart. Only information which would, or is likely to, cause serious prejudice to trade, industrial, technological, technical, organisational and the legitimate financial interest of the counterparts should be confidential.
12. Taking into account that Global Loans constitute a significant part of EIB lending, the EIB should improve the transparency of this type of lending. 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. There is no reason why these kind of projects be treated differently only because of intermediary involvement. Financial intermediaries should be required in the Financial Contract to inform final beneficiaries about the EIB and its policies.
13. As far as there is confidentiality applied to the Finance Contract, the part of the document which contains the environmental and social conditions that the Project Promoter should fulfill, must be made publicly available. This information should be subject to routine disclosure, as it is of significant importance.
14. In its policies the EIB refers to Regulation 1367/2006 on the application of the Aarhus Convention to EC institutions and bodies (hereafter Aarhus Regulation). However the EIB needs to reconsider its approach towards the the Aarhus Convention and needs to examine which of the obligations stemming from the Convention itself and Aarhus Regulation apply and how to assure compliance. It is not clear whether the EIB treats the Aarhus Regulation in the same way as it does the EIA Directive, meaning whether it requires that all the projects it finances are in compliance with the Aarhus Regulation and Aarhus Convention.

- **Access to environmental information:** The EIB should make sure that it possesses and updates all environmental information relevant to the EIB and its operations. The EIB should consider what information is needed in order to ensure compliance with its own policies (for example the Statement on Environmental and Social Principles and Standards). The current policy does not ensure that the EIB holds environmental information relevant to its function and obligations. It is unclear, for instance, what environmental information the EIB requires from the borrower in order to conduct proper environmental due diligence. A Non-Technical Summary of the Environmental Impact Assessment Report is in our opinion not enough to ensure proper appraisal. Policies should moreover include requirements for ensuring that the information is up-to-date, accurate and comparable. The EIB should collect and actively disclose environmental information it collects during the appraisal process and afterwards. Furthermore according to the Aarhus Regulation, the institution should organise environmental information with a view to its active and systematic dissemination to the public. The Bank should make efforts to make more information available on its website automatically, on a routine basis, especially the Bank's own environmental and social assessments of the operations.
- **Public Participation** – The EIB prepares plans and programmes which relate to the environment and are required under legislative, regulatory or administrative provisions (Sixth Community Environment Action Programme) and therefore should ensure public participation opportunities when all options are still possible.

Detailed comments on the Transparency Policy

Willingness to listen and receptiveness to comments

p.27 The EIB is committed to become an even more transparent organisation and actively encourages stakeholder input. Through its commitment to open communication, the Bank demonstrates its willingness to listen to third parties so as to benefit from their contributions to its work in fulfilling its mission.

We propose to add to this point:

In order to increase the Bank's Governing Bodies accountability to EU citizens, the Bank facilitate meetings between the CSOs' representatives and the members of the Bank's Governing Bodies.

Prohibited practices:

p. 38 The EIB makes no reference to tax havens and off-shore centres. The policy in this point should prohibit the use (by companies or their shareholders) of both tools of escaping from or minimizing tax from investments in the country concerned.

Corporate governance:

We propose to add an additional point regarding transparency of the decision making in the Board of Directors and Board of Governors. Official minutes from the Board of Directors, describing the decisions made and justification should be made available to the public. A provisional agenda of the Board of Governors meeting should be available to the public before the meeting, together with background documents. Official minutes from Board Governors meetings, including individual statements, should also be made public.

Principles for disclosure:

p. 65 Now: "All information held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure"

Proposed change: "All information held by the Bank is subject to disclosure, unless there is a compelling reason for non-disclosure"

The EIB should actively disclose information on its website about all its operations.

Publication vs. Disclosure

p. 68. EIB should list all documents that will be disclosed through its website. Current practice shows that EIB does not disclose on its website documents that are of public interest, for example its own appraisal results: environmental and social assessments of the operation. The results of the appraisal process should be published before Board of Directors approval.

Language regime

p.67 The EIB's project documents should also be available in the language of the country the project is located, especially the environmental impact assessment report, social impact assessment, resettlement plans and other relevant documents.

Restrictions

p.70. The EIB should refer also to internationally recognised and accepted transparency standards in similar financial institutions, like the World Bank Group or EBRD.

The EIB should explain what it refers exactly to when saying: "National regulations and banking sector standards covering business contract and market activity may also apply to the EIB." Which country regulations is the EIB referring to? Which banking sector standards is the EIB referring to?

Stakeholders engagement

p. 82 We propose to add: "The EIB requires from the Project Promoter to conduct public consultation relevant to the project category and according to the EIB's requirements stemming from relevant policies when all options are still open. The EIB requires from the Project Promoter to disseminate relevant project information (environmental and social) among members of the public concerned in the appropriate language and form, giving the public sufficient time to prepare for decision-making process. The EIB requires that the Project Promoter provides evidence that the results of consultations were taken into account."

Public Consultation

p. 85 The EIB prepares plans and programmes which relate to the environment and are required under legislative, regulatory or administrative provisions (Sixth Community Environment Action Programme) and therefore should ensure public participation opportunities when all options are still possible.

Good Governance

p. 92 "(...)The EIB endeavours to promote transparency and good governance in all the projects it finances, in the companies it participates and generally with all its counterparts."

We propose this be changed to: “(...)The EIB requires transparency and good governance in all the projects it finances, in the companies it participates in and generally with all its counterparts”.

The EIB is responsible for ensuring the transparency of all the projects it finances and should only invest in companies that meet its transparency standards.

Detailed comments on the Public Disclosure Policy

The policy framework

p.6 It should be added that the European Investment Bank as an autonomous institution with a legal personality is accountable to the citizens of the European Union. The current version stipulates that the EIB is accountable to citizens only through the governments of the Member States.

p.9 The proposed draft of the Policy says: “All applications for loans are submitted to the Commission for an opinion on the investment’s conformity with EU policies, before financing approval by the EIB Board of Directors”

According to the “Working procedures between the EIB and the Commission services (DG ENV and DG ECFIN) in the consultation of the Commission under Article 21 of the EIB Statute”, it is the EIB that should satisfy itself that projects to be financed comply with environmental rules and requirements and should conclude, on the basis of this assessment, whether the project complies with Community policy and legislation in the field of environment (Points 2.1.1 – 2.1.2). Point 2.1.3 stipulates that “the project note submitted by the Bank to the Commission in the framework of the consultation procedure under Article 21 of the EIB Statute shall include systematically an explicit confirmation of the project’s compliance with environmental legislation on the basis of the Bank’s prior assessment (...)”

The Commission’s role is not to opinion on the investment’s conformity with EU policies.

p.13 The current draft says: “The Bank ensures that its activities respect EU policies and laws. In countries where these are not applicable, EU policies and laws, as well as international good practice, are the benchmark for the EIB when carrying out its activities.”

This is not coherent with the new Statement of Environmental and Social Standards and Principles which stipulate that although outside the EU, where EU policies and law are not applicable, EIB projects must comply with the EIA Directive (and not only that the EIB uses it as a benchmark).

Presumption of disclosure and related principles

p.21 “The EIB’s disclosure policy is founded on a presumption of disclosure of information, in line with EU legislation, those of the EU Member States, and internationally accepted principles. All information held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure (...)”.

The EIB should explain or give examples what “internationally accepted principles” it refers to. It should delete phrase “upon request” from this point and make a commitment to the routine disclosure of information to the extent possible.

p.24 *“National regulations and banking sector standards covering business contracts and market activity may also apply to the EIB. There are therefore certain constraints on disclosure of information”.*

The EIB must explain which national regulations and banking sector standards it is referring to.

Exceptions to the principle of disclosure should be defined and refusal of disclosure should be grounded in these exceptions. Exceptions to disclosure are defined by Article 4 of Regulation 1049/2001. The EIB may not refuse access to information on the basis of country legislation or undefined banking sector standards.

p.25 and 26 The regime of exceptions should be based on the principle that access to information may be refused only where the EIB can demonstrate that disclosure would cause serious harm to one of these interests, which are listed in points 25 and 26 and that the harm to these interests outweighs the public interest in disclosure. We propose to change the points 25 and 26 in the following way:

“Access to information shall be refused where disclosure would cause serious harm to:

- *the public interest, as regards international relations or the financial, monetary or economic policy of the EU, its institutions and bodies or a Member State;*
- *privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data.*
- *commercial interests of a natural or legal person, including intellectual property²”*

“Access to information will also be refused where disclosure would seriously undermine the protection of:

- *court proceedings and legal advice;*
- *the purpose of inspections, investigations and audits”*

p.28 The Appraisal Authorisation, Appraisal Report, Note to the Commission and Member States do not contain opinions for internal use as part of deliberations and preliminary consultations. These are the documents that are drawn up by the Bank in the formal appraisal process and constitute the official results of the Bank’s own due diligence. The Bank’s own project assessment (economic, financial, social or environmental) is a requirement of the other policies that the Bank has applied to itself or are applicable to the Bank on the basis of legal documents (for example the EIB Statute, Art 21).

Official minutes from Board of Directors and Board of Governors meetings do not constitute opinions for internal use only. The decisions of the Bank’s governing bodies constitute public information. The EIB should refer to the Council of European Union practices for disclosure of information. In terms of transparency of the Board of Governors the EIB should adopt the procedure used by the Council of European Union which also consists of ministers of the Member States. The EIB should make public a provisional agenda of the Board of Governors meeting, background

² The term „commercial interest” covers trade, industrial, technological, technical, organisational and financial information disclosure of which would, or would be likely to, cause serious prejudice to the legitimate interest of the third party

documents and minutes from the meeting. Individual statements by the Member States should also be made public unless there is a compelling reason for confidentiality.

p.30 All contracts with public authorities should be disclosed. The European Investment Bank and the partner State constitute public institutions. Agreements between public institutions should be subject to disclosure as information of general public interest. There is no commercial interest involved between EIB and the state concern as neither acts for profit.

p.32 Management proposals should be released before project approval with other relevant documents (like bank's environmental and social assessment and non-technical summary of EIA or ES), as soon as they are drawn up by the Bank. The Management Proposal includes the result of the EIB's own project appraisal. The results of project appraisal should be disclosed before ultimate decisions are made in order to enable the interested public to consider and formulate responses.

For the private and public sector information may not be disclosed only if it falls under the exceptions formulated in the other part of the policy (reference to Regulation 1049).

p. 33 The current draft says that: *“However, certain private sector projects are not published before Board approval and, in some cases, not before loan signature to protect justified commercial interests”*

This is against the standards used by other IFIs, also those dealing specifically with the private sector, like IFC. All category A and B projects should appear on the website at least 60 days before Board approval and the rest at least 30 days before approval.

p.34 The EIB is also accountable for information on intermediary banks' operations. Although detailed information on these operations does not constitute information of general public interest, there is certain information that should be made public, such as aggregated data on particular global loans including the type of projects eligible for financing, the number of sub-projects, environmental and social conditions applied, and information about financial intermediary procedures for ensuring compliance with relevant legislation. All subprojects of category A and B should however be listed on the EIB webpage, including NTS or EIS.

Framework Agreements with Partner Countries

p.53 Framework Agreements constitute documents that are potentially of general public interest and therefore they should be disclosed on a routine basis via publication on the EIB webpage. A presumption of disclosure should also apply to Framework Agreements. Narrowly defined exceptions, as in Regulation 1049/2001, should apply.

Project List

p.71 All category A and B projects should appear on the website at least 60 days before Board approval and the rest at least 30 days before approval.

p.73. The Project Summary should include information on when the project is planned for approval by the Board of Directors. The Project Summary should include the

results of the EIB's own environmental, economic and social assessment process described in the Environmental and Social Practices Handbook.

p.74 The EIB's own environmental and social assessment should also be available on the website and disclosed before the Board's approval.

Intermediated loans

p.76 Although detailed information on these operations does not constitute information of general public interest, there is certain information that should be made public, such as aggregated data on topics including: the types of projects eligible for financing, the number of sub-projects, the environmental and social conditions applied, information about financial intermediary procedures for ensuring compliance with relevant legislation and the contact person in the financial intermediary. The above information should be disclosed on a routine basis, not only upon request. All subprojects of category A and B should however be listed on the EIB webpage, including NTS or EIS.

Topical Project Brief

p. 78 *In cases where projects raise considerable public interest, the EIB publishes a Topical Project Brief on its website.*

What does "considerable public interest" mean? What does a TPB include? The EIB should disclose on a routine basis all important project documents and information it holds (NTS, EIS, Management Proposal, Note to the Commission, environmental and social assessment and other specific project information)

Disclosure on request

p. 80 The Management Proposal as well as the EIB's own environmental and social assessment should be published on the website before Board approval. The EIB should make commitments for routine disclosure of all important project related documents and information. All typical project documents should be actively published on the EIB's webpage. It is especially important to publish before approval the environmental and social assessments of the project in order to enable interested or affected parties to consider it and make appropriate comments.

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