To:

Directors of the European Investment Bank

Brussels, 27-01-2015

Ref: **Draft EIB transparency policy**

Dear Madam, Sir:

We are writing to you as a group of international civil society organisations to convey our on-going concerns in relation to the 9 January 2015 draft EIB Group Transparency Policy. We would also like to put forward recommendations for further reform of the draft Policy by the EIB Directors at the Board meeting where the final version of the draft Policy will be presented for adoption, on 3 February 2015.

We would like to start by expressing support for the improvements which have been made since the first draft Policy was issued in July 2014, which incorporate some of the suggestions put forward by civil society groups during the public consultation process. We refer here, in particular, to *A Joint CSO Submission on the Draft Revised Version of the EIB Transparency Policy*, presented by 18 civil society organizations, including all of the signatories to this letter. That Submission contains more detailed elaboration on the matters that are set out below.

In particular, we consider the expansion of the presumption of disclosure in Articles 2.1 and 3.5 (and the removal of the reference to the unclear distinction between EIB administrative and non-administrative tasks) to be a significant improvement. Those modifications ensure more consistency with EU legislation related to access to information, namely Directive 1049/2001.

However, the current draft Policy still represents a major step backwards from the existing Policy in terms of access to information and the public disclosure of information. While other international financial institutions, as well as many other official actors, are embracing transparency and accountability, the EIB is proposing to step backwards. This is most unfortunate and we strongly urge you to reconsider this unfortunate move.

Exceptions to information disclosure

One area of regression is in relation to exceptions. Article 5.5 of the draft Policy proposes to expand the existing exceptions beyond what is provided for by EU legislation by adding in a **presumption that all documents related to investigations, reports and audits shall be confidential, even after the activity has been closed.**

This exception appears to be based on case-law in which the European Court of Justice set out the conditions according to which access to documents contained in administrative files can or cannot be provided in accordance with competition law. However, the presumption of confidentiality established in this case law is relevant only in the state aid and merger control contexts, and should not be applied to EIB funding activities. In addition, the proposal to keep documents confidential even once the investigation is closed is **not in line with the interpretation of the Court** in case T-447/11. Finally, there is no need for the transparency policy to formally establish such a presumption, as long as the exception is applied properly in practice. This proposal gives the impression that the EIB intends to keep everything relating to corruption, fraud and violation of the law confidential.

An important symbolic case here is the EIB's $50 million loan to the Mopani copper mine in Zambia. The Bank announced an investigation of the tax evasion allegations against Mopani Copper Mines plc, a Zambian company which is largely owned by Glencore. The EIB continues to refuse to disclose this report, despite a decision by the European Ombudsman that it should do so.

The draft Policy also fails to extend the public interest override to all exceptions as the override set out in Article 5.7 only applies to Article 5.5 and 5.6, while Article 5.4 only includes an unclear and partial public interest override.

We therefore recommend that the EIB delete the presumption in favour of secrecy in Article 5.5, extend the Article 5.7 public interest override to all exceptions and in particular Article 5.4, and remove references to the public interest in Article 5.4.

Inconsistency with the Aarhus convention and information disclosure on EIB projects

As it stands, the Public Register of information, created in 2014, does not ensure full respect of the Aarhus convention and EU Regulation 1367/2006. Regulation 1367/2006 calls on EU institutions to process and make available a wide range of environmental information. The list of information included in the regulation includes "data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment", "authorisations with a significant impact on the environment, and environmental agreements" and "environmental impact studies and risk assessments concerning environmental elements". In addition, the Aarhus convention requires Parties to provide "sufficient information to the public about the type and scope of environmental information held by the relevant public authorities".

Therefore, **the EIB should adopt and publish a publication scheme setting out the type of environmental information it intends to record in its Public Register**. Reports carried out by the relevant departments of the EIB on environmental and social background, context and impact of the project, on-site visits, projects indicators, and other relevant environmental information needs to be listed in the register.

In relation to project information, the new External Lending Mandate of the EIB for the period 2014-2020 states that, "where possible, project completion reports related to EIB financing operations shall be published excluding confidential information". The transparency policy should respect that requirement, which is not presently the case.

Enhancing the transparency of EIB intermediary lending

The draft Policy also includes an exception relating to information on "individual allocations made by local banks to support investment by their own customers under credit lines established with the EIB". According to the EIB, this information falls within the competence of the intermediary bank as part of the normal business relationship between that bank and its customers.

However, according to EIB's environmental and social safeguards, Financial Intermediaries' sub-projects are required to include appropriate Environmental Assessments and the Financial Intermediary has to verify that the subproject meets national requirements. We therefore call on the Bank to apply the relevant legal framework constituted by Regulation 1049/2001, Regulation 1367/2006 and the Aarhus Convention to all the information held by the Bank which pertains to its lending activity, including financial intermediary lending.

The EIB must implement the European Parliament Resolution of 11 March 2014, which "reiterates and accentuates the Bank's responsibility in **enhancing the level of transparency in the selection of financial intermediaries and partners for co-financed projects and as regards the final beneficiaries**".

Call for action to EIB directors

If the draft Policy enters into force as it stands, it would send a highly worrying signal to other international financial institutions, as well as to other EU institutions. Instead of strengthening its commitment to disclosure, the EIB would be stepping backwards. The signatories to this letter call on the EIB to live up to its commitment towards transparency and ensure real respect for the presumption of disclosure which is stated so clearly in the draft Policy.

We call on you to step up during the discussion on the adoption of the new policy on 3 February to challenge the weaknesses in the draft Policy and to ensure that the new policy is fully in line with the EIB's international commitments regarding transparency.

Sincerely,

The signatories:

Action Aid International

Arab NGO Network for Development

Article 19

Both ENDS

CEE Bankwatch network

Centre for Law and Democracy

Counter Balance

Eurodad

IBIS

Publish What You Fund

Sherpa

Transparency International (European Union office)

WWF European Policy Office