



*Mr. Nikiforos Diamandouros
The European Ombudsman
1 Avenue du Président Robert Schuman
B.P. 403
FR - 67001 Strasbourg Cedex
France*

June 10th 2005

Re: Complaint 3501/2004 PB

Dear Mr. Diamandouros,

I would like to thank you for the opportunity to comment on the EIB's reaction to our complaint. In my response I have followed the structure of the EIB letter.

Add 1: Before dealing with the 'claims' of the complainant, a general explanation of public access to information, published on the Bank's website is made hereafter.

In this general explanation President Maystadt refers only to the EIB document 'EIB Rules on Public Access to Documents', which he also attaches to the response. Our claim was primarily based on the document 'Public Access to Information. How EIB communicates – overview' (annex 1). When discussing the EIB project pipeline, this document states: 'In principle, all projects being considered for financing appear on the list, unless the project promoters (or other business partners where appropriate) oppose inclusion on justified grounds of commercial/market confidentiality.'

We believe that the document 'Public Access to Information. How EIB communicates – overview' constitutes part of the EIB's information policy together with the documents 'Public Access to Information. Information Policy statement' (annex 2) and 'Rules on Public Access to Documents', all of which are currently under revision. In the revision note on the EIB website (annex 3) it is noted:

"The draft merges, and adapts, the original three public information policy documents which are currently published separately on EIB's website:

- Information Policy Statement
- How EIB Communicates
- Rules on Public Access to Documents"

This clearly shows that the other two documents have been part of the EIB's Information Policy.

We believe that neither in the past nor currently has the EIB proved that the decision not to publish the D8 project on the EIB project pipeline was based on “justified grounds of commercial/market confidentiality”.

Further on President Maystadt states: *“If, for reasons of confidentiality, a member staff is unable to divulge the information requested, he/she will give the reasons why such information cannot be provided”*.

In the D8 case, this did not really happen. The first response from the EIB wrongly directed us to the EIB website (see appendix 2 of our original complaint). After confirming that the website did not include the information requested, we had to further request information, with a final response from the EIB coming only on March 10, 2003.

*Add 2. Among the reasons quoted in the paragraph covering the publication of projects to be included in the financing pipeline, it is mentioned that promoters may ‘oppose inclusion on justified grounds of commercial/market confidentiality’. **This does not exclude the possibility that the EIB, using its reasonable judgment and on the grounds of justified reasons (among which the application of its ‘Rules on Public Access to Documents’), could nevertheless deny publication on the EIB website of some projects, when the legitimate conditions for non-publication are met. (underlining by the complainant)***

The above explanation does not follow from the EIB Disclosure and Information Policy. The EIB’s ‘reasonable judgment’ is not mentioned as a factor for releasing or withholding information; it therefore can not be treated as a tool guiding the EIB’s disclosure of information as it renders the policy and the rules on disclosure completely useless.

This explanation also significantly contradicts the EIB’s statement presented in the document ‘Public Access to Information. Information Policy statement’: “Acknowledging that the public has an interest in the activities of the EIB this policy statement and related documents aim to support one of the EIB’s key corporate objectives: to achieve a high level of transparency of its activities and communicate even more effectively with all stakeholders”.

Add 3: [...] the reason for non-publication was given by e-mail of 10 March 2003 on the basis of the request of the Czech Government not to publish sector projects until the Parliament of the Czech Republic had approved them.

We still maintain that the Government of the Czech Republic did not issue such a request as was proved in the letter from the Czech Ministry of Finance, the main counterpart of the EIB and representative of the Czech Republic in the EIB Board of Governors.

However, theoretically speaking, if such request existed it should have applied to all projects financed by the EIB in the Czech Republic where the Czech government was a partner. The EIB should have been notified about it by the Ministry of Finance and should by definition not release any such projects in its pipeline until Parliament agrees, and therefore should not seek clearance from the Ministry of Transport (see reference below).

Add 4: By letters of 3 September 2001, 10 October 2003 and 1 October 2004, the EIB asked the Ministry of Transport (its counterpart) for its consent to the publication of information about the

project. The Ministry of Transport replied by letters of October 2001, 4 November 2003 and 19 October 2004, respectively, denying consent until approval of the loan by the Czech Parliament. This information was already given to the complainants by e-mail dated as of 10 March 2003.

We cannot agree with this statement.

The EIB should provide an appropriate explanation as to why the information was not disclosed referring at least to specific documents, in this case to the letter of the Ministry of Transport with the specific request. If the EIB had informed that the specific request came from the Ministry of Transport and had specified the date of correspondence of the request for non-publication, concerned Czech citizens would have had the opportunity to approach the Ministry for an explanation of the confidentiality reasons.

In the letter dated 10 March. 2003 we did not receive information about the EIB's communication with the Ministry of Transport from September-October 2001. In that letter we obviously also did not receive information on the EIB's communication with the Ministry of Transport from October-November 2003 and October 2004, to which President Maystadt refers to in his response.

Add 5: To conclude, I am convinced that the refusal of disclosure was justified under the Bank's 'Rules on Public Access to Documents' and that therefore, in my view, the Bank acted reasonably.

We reassert our claim that in its refusal to adequately provide information regarding the D8 case, the EIB did not act in line with the principles and guidelines stated in its Information Policy Documents: 'Public Access to Information. How EIB communicates – overview', 'Public Access to Information. Information Policy statement' and 'Rules on Public Access to Documents'.

Yours sincerely,

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