

Re: Disclosure of documents from EIB loans to the Volkswagen group

Sent to the European Investment Bank on November 24, 2015.

Confirmatory application

I refer to your reply of 9th November 2015 to my request for information of 25th September 2015. Please note this is a second confirmatory application related to this case which should be treated as addition to the one of 9th November 2015.

The initial request included application for disclosure:

1. Loan contracts related to above listed projects including environmental and technical requirements.
2. Reports and evidences provided by “VW” group within the above loans.¹
3. Information whether car models in which defeat devices were installed were covered by the EIB loans
4. Information on which models of “VW” group were covered by the above loans.
5. Were there any other loans from the EIB to “VW” group from 2005-2015 which are not on the list above?
6. Information on EIB’s undertakings in relation to revealed misconduct by “VW” group.
7. Information whether the EIB plans to request new evidences from “VW” group related to environmental and technical requirements of the contracts.
8. Information whether the EIB plans to request new evidences (based on real emissions and fuel efficiency testing) from other automotive sector companies which were beneficiaries of the EIB research and development loans.

The bank has failed to disclose most of information and documents requested in my initial request and specifically in reference to the above questions it failed to provide:

1. Loan contracts related to above listed projects including environmental and technical requirements.

The Bank only partially disclosed finance contracts requested and only two out of twelve requested. The issue of not disclosing other loan contracts was covered by my first confirmatory application of 9th November 2015.

My initial request concerned disclosure of the loan contracts including environmental and technical requirements. Therefore the request was not limited to the environmental sections of the finance contracts.

The bank referred to the Article 5.5 (first two bullet points) of its Transparency Policy to inform that information in disclosed documents (two redacted loan contracts) which was covered by the

¹ It was further explained in the message of 19th October 2015 that request refer to all reports provided by the VW group related to the use of the loans from the EIB and all evidences provided by the borrower related to results, outcomes and impacts of its undertakings covered by the EIB loans

exceptions had been replaced by the symbol “[...]”. This concerned financial and technical information which if disclosed would undermine the protection of the promoter’s commercial interests and its intellectual property rights. Moreover the bank stated that none of the information removed from these documents related to the environment.

The Art 5.7 of the Transparency Policy states that *the exceptions under 5.5 and 5.6 shall apply unless there is an overriding public interest in disclosure. As regards the first, second and fourth bullet points of Article 5.5 with the exception of investigations, an overriding public interest in disclosure shall be deemed to exist where the information/document requested relates to emissions into the environment.*

The information requested which was redacted by the EIB from the documents disclosed, relates to emissions into the environment and therefore the exceptions from the Art 5.5 cannot be applied. The information requested relates to the emissions into the environment because the loans were granted exactly for limiting emissions to the environment through the fuel efficiency and less carbon-intensity. Moreover, this is highly probable that these loans had been used by Volkswagen to intentionally misrepresent and manipulate data regarding emissions from the car engines for years to undercut standards which were put in place to protect EU citizens’ health and the environment. Information redacted from these documents and entire finance contracts relate emissions into the environment and therefore should have been disclosed by the bank entirely.

2. Reports and evidences provided by “VW” group within the above loans.

The bank has failed to provide requested information and documents stating that that the reports for the above mentioned loans were not yet due to be delivered by VW to the EIB. However the initial request and further explanation regarding the type of reports and evidenced did not refer only to the final reports and evidences but also those provided by the borrower during the contractual obligations.

Both loan contracts as disclosed by the bank, include provisions obliging the borrower to inform the bank of any action or protest initiated or any objection raised by any third party or any genuine complaint received by the Promoter or any material Environmental Claim that is to its knowledge commenced, pending or threatened against it with regard to environmental or other material matters affecting the Project, any material non-compliance by it with any applicable Environmental Law; and any suspension, revocation or modification of any material Environmental Approval, and set out the action to be taken with respect to such matters.

Reports and evidences provided by “VW” group within the loans, which were the subject of my initial request, definitely falls under the above provisions from the loan contracts. The EIB has failed to disclose these documents provided by the borrower which refer to the above contractual obligations.

Therefore, I would like to request again disclosure of reports and evidences provided by the borrower within the loans listed, including information provided on the basis of the above mentioned clauses from the finance contracts.

3. Information whether car models in which defeat devices were installed were covered by the EIB loans

The bank has failed to provide requested information limiting itself to a statement of 16th October 2015 that it was inquiring about the potential links between the EIB financing and the VW emission issue. The bank has not updated this information in its next response of 9th November 2015.

4. Information on which models of "VW" group were covered by the above loans.

The bank has failed to provide the requested information by misinterpreting my initial request. Even if the loans which were subject of my request did not aim at developing of specific vehicle models, but rather fuel efficient engines, low emission engines and car safety technologies, these new technologies and engines were applied in specific vehicle models. Therefore the bank should have disclose this information if provided by the borrower.

6. Information on EIB's undertakings in relation to revealed misconduct by "VW" group.

The bank failed to provide decent information on its undertakings in its reply of 16th October and has failed to provide an update in the final reply to my request. The bank only provided enigmatic response that it was conducting **a comprehensive review** of the situation and informed that it was also waiting for further information on the ongoing investigations and legal proceedings.

This response cannot be considered enough to satisfy the request for information on bank's undertakings in a reference to the situation. Although the bank claimed it was conducting a comprehensive review, it was at the same time unable to provide detailed information about the scope and content of this review (although it concerns borrower misconduct related to its obligations to protect environment and human health) and exact undertakings within this review. It also failed to provide information about which ongoing investigations and legal proceedings it was waiting and from who it expected to receive this further information. Therefore the bank has failed to comply with the Article 15(1) Treaty on Functioning of the European Union which provides that: "*In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible.*"

7. Information whether the EIB plans to request new evidences from "VW" group related to environmental and technical requirements of the contracts.

The bank has failed to response to this request for information. Although it undertook a comprehensive review of the situation, during which it might have requested the borrower to provide the bank with additional information (like the one on ongoing investigation and legal proceedings), the bank had not disclosed this information in its reply.

8. Information whether the EIB plans to request new evidences (based on real emissions and fuel efficiency testing) from other automotive sector companies which were beneficiaries of the EIB research and development loans.

The bank has failed to provide any information about its undertakings towards the other automotive sector companies which were beneficiaries of the EIB research and development loans in reference to their vehicle models (or engines) performance related to engines fuel efficiency and emissions.