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Evropská investiční banka
Den Europæiske Investeringsbank
Europäische Investitionsbank
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Ευρωπαϊκή Τράπεζα Επενδύσεων
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Evropska investicijska banka
Euroopan investointipankki
Europeiska investeringsbanken

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EXP BEI-EIB
B 006405 18 DEC 15

Luxembourg, 16 December 2015

SG/CR/CS/2015-1498/JSB/vk

Subject: Your confirmatory application of 24 November 2015

Dear Mrs Roggenbuck,

I refer to your confirmatory application of 24 November 2015¹ requesting the European Investment Bank (EIB) to reconsider its initial reply of 16 October and 9 November 2015 regarding your request of 25 September 2015 for access to information and documents related to the EIB loans to the Volkswagen (VW) Group (hereafter, the "initial application"). I further refer to the Bank's acknowledgments of receipt of 10 and 24 November 2015 and email of 30 November 2015 informing you that your confirmatory applications will be treated as one confirmatory application in line with Article 5.31 of the EIB Group's Transparency Policy (EIB TP).²

I would first like to thank you for this confirmatory application, which gives the EIB the opportunity to review and better clarify its initial reply to your initial application.

Background

With your initial application you have asked for access to the following information:

"(1) Loan contracts related to above listed³ projects including environmental and technical requirements,

¹ In its email of 30 November 2015, the EIB informed you that, in line with Article 5.31 of the EIB TP, your confirmatory emails of 9 and 24 November 2015 requesting the EIB to reconsider its reply to your initial application will be considered as one confirmatory application. The EIB also informed you that it will reply to this confirmatory application in line with the deadline laid down under Articles 5.23 – 5.25 of the EIB TP starting from 24 November 2015.

² <http://www.eib.org/about/publications/eib-transparency-policy.htm>

³ You referred to the following operations:

"MAN TRUCKS RDI, 2009

SCANIA 2020 FUEL EFFICIENCY, 2013 – Climate Action

SCANIA EMISSIONS REDUCTION RDI, 2007

SCANIA TRUCKS CLEAN ENGINE R&D, 2009

SCANIA TRUCKS RDI, 2008

SKODA / VW SK CAPACITY DEVELOPMENT, 2005

SKODA / VW SK CAPACITY DEVELOPMENT, 2005

SKODA ENGINE RDI, 2014 – Climate Action

SKODA RDI & PRODUCTION INVESTMENTS, 2009

- (2) Reports and evidences provided by "VW" group within the above loans⁴,
 (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 EIB replied to your initial application in two stages, on 16 October and 9 November 2015.

Firstly, in its reply of 16 October 2015, the EIB informed you of the five outstanding loans with the VW Group in the EU, and provided a reply to your questions (3) to (8).

In particular, the Bank informed you that;

- "(3) EIB is currently inquiring about the potential links between EIB financing and the VW emissions issue,
 (4) The above loans do not relate to the development of specific vehicle models, but rather they concern financing of RDI activities to support the development of innovative technologies leading to: (i) lower consumption of fossil fuels; (ii) emission reduction (in particular at local level); or (iii) an increase in safety; (5) In addition to the afore-mentioned outstanding loans within the EU, the EIB has also three outstanding loans for the Volkswagen group outside of the EU, signed during the period 2005-2015,
 (6) The EIB follows very closely recent allegations in the media regarding the Volkswagen group. The Bank is currently conducting a comprehensive review of the situation. The Bank is also waiting for further information on the ongoing investigations and legal proceedings."

In response to (7) and (8), the EIB referred to the above answers.

Secondly, in its reply of 9 November 2015, the EIB answered to your questions (1) and (2) granting partial access to the finance contracts of two of the outstanding EIB loans for VW projects in the EU and indicating that the other three outstanding EIB loans with VW in the EU concern heavy commercial vehicles and other brands of the VW Group which are not linked to the VW diesel emission issue. The EIB also informed you that the reports for the above mentioned loans were not yet due to be delivered by VW to the EIB.

Hereafter, the EIB's replies of 16 October 2015 and 9 November 2015 are referred to as the EIB's initial reply.

EIB assessment of your confirmatory application

In light of the information submitted in your confirmatory application and pursuant to Articles 5.31 and 5.32 of the EIB TP, a fresh review of the EIB's initial reply granting partial access to the requested information has been carried out, taking the following decision/position:

- (1) Loan contracts related to projects listed in footnote 3 including environmental and technical requirements

[SKODA RDI & PRODUCTION INVESTMENTS, 2010 – Climate Action](#)
[VOLKSWAGEN ANTRIEB RDI, 2009 – Climate Action](#)
[VW INNOVATIVE POWERTRAINS, 2014 – Climate Action"](#)

⁴ On 19 October 2015, you responded to the Bank's request for clarification of 16 October 2015 regarding your second question in (2), explaining that your request refers 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."

In your confirmatory application, you draw the EIB's attention to the fact that your request was not limited to the outstanding loans, and that you also not consider justified that the EIB limits the scope of disclosed information on the basis of its assessment what the "*VW diesel emission issue*" is". You argue that the EIB does not comply with the EIB TP by not disclosing information requested and not providing justification based on the EIB TP.

You also indicate that your request concerned the disclosure of "*the loan contracts including environmental and technical requirements*", and "*was not limited to the environmental sections of the finance contracts*". You allege that the information redacted from these documents and entire finance contracts relate to emissions into the environment "*because the loans were granted exactly for limiting emissions to the environment through the fuel efficiency and less carbon-intensity*", and therefore should have been disclosed by the EIB entirely, in reference to Article 5.7 of the EIB TP.

As part of its review, it is noted that your initial application referred to "*the EIB's loans to Volkswagen ("VW") group between 2005-2015*", and to "*Loan contracts related to the above listed projects*" in reference to the twelve EIB loans to the VW group listed in footnote 3. The EIB therefore acknowledges that your initial application was indeed not limited to the outstanding loans.

In addition, while your initial application did make a specific reference to "*revealing that "VW" group installed defeat devices in its cars which artificially lowered emissions*", suggesting that your application was related to the VW diesel emission issue which has been reported in the media and on your website,⁵ the EIB acknowledges that your application was not specifically limited to any particular brand of the VW Group.

In light of the above, it is first noted that the EIB's initial reply granting partial access to the requested finance contracts was not limited to the disclosure of the environmental sections of the finance contracts, but also included parts of the technical description sections of these contracts. The EIB justified the non-disclosure of the redacted parts on the basis of the exception related to the protection of commercial interests in line with Article 5.5 of the EIB TP.

Furthermore, the fact that some of the finance contracts requested concern the financing of Research Development and Innovation (RDI) activities to support the development of innovative technologies leading to, among others, limiting emissions to the environment through fuel efficiency and less carbon intensity, does not mean that all of the information contained in these documents relates to emissions into the environment. Finance contracts define the terms of a financial transaction and as such, the information contained in them cannot be considered as relating to emissions into the environment *per se*, even if the outcome expected from the investment for which the loan has been provided may relate indirectly to future emissions into the environment.

Moreover, your allegation about the probability that these loans "*had been used by VW 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 citizen's health and the environment*", is being the object of the EIB's ongoing review since the issue was made public by VW and does not appear to be substantiated based on the information currently available.

It should be further emphasised that the environmental requirements included in the finance contracts, which arguably could be considered as related to emissions into the environment, are part of the environmental sections disclosed in the EIB's initial reply, and that none of the information redacted from the disclosed documents related to the environment. As a result, no overriding public interest as per Article 5.7 of the EIB TP is seen in the redacted information.

Further to the above clarifications, the EIB is pleased to provide you with the remaining requested finance contracts, which now completes the list of all EIB loans to the VW Group signed between 2005 and 2015, both outstanding and repaid, and includes all brands of the VW Group. Please note that a number of contracts signed in the concerned period were cancelled after signature, and therefore are not being provided in the absence of an effective contractual relationship and as no EIB funds were ultimately provided.

For the sake of completeness, and although your initial application appears to refer only to the EIB loans to the VW Group inside the EU, the Bank is also providing you the requested documents for the

⁵ <http://bankwatch.org/news-media/blog/smoke-billions-europes-auto-industry-eus-house-bank>

EIB loans to the VW group outside the EU, also including direct and intermediated loans to Ducati Motor Holding S.p.A, although this brand was not part of the VW Group at the time of the EIB loan signature.

However, the EIB confirms its initial position on the partial access provided to the requested documents on the basis of Article 5.5 of the EIB TP. Therefore, information in these documents which is covered by the exceptions provided for in the EIB TP has been replaced by the symbol “[...]”. This concerns financial and technical information which, if disclosed, would undermine the protection of the promoter’s commercial interests and its intellectual property rights.⁶ None of the information removed from these documents relates to the environment. Furthermore, no overriding public interest applies to the redacted sections.

(2) Reports provided by VW Group within the loans listed in footnote 3

In addition to the arguments already addressed in (1), you submit in your confirmatory application that the initial application and further explanations you had provided regarding the type of reports and evidences requested “*did not refer only to the final reports and evidences*” but also to those provided by the borrower as part of its contractual obligations under the related loans.

You specifically refer to the provisions included in the loan contracts disclosed which “*require the promoter 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.*” You, therefore, reiterate your request for disclosure of “*reports and evidences provided by the borrower within the listed loans, including information provided on the basis of the above mentioned clauses from the finance contracts*”.

As part of its review, and as indicated in (1), the EIB reiterates its acknowledgement that your initial application was not limited to the outstanding loans and was not limited to any particular brand of the VW Group.

The EIB notes that the promoter’s reporting obligations with respect to the projects financed by the EIB are clearly defined in the EIB finance contracts. In the majority of the cases, this reporting takes the form of a project completion report to be delivered on project completion and initial operation.⁷

However, the EIB understands that your request regarding this point refers to the contractual obligations of the VW Group under the “information and visits” sections of the related finance contracts to inform the EIB about the diesel emission issue at stake.

The EIB notes that these particular contractual provisions would only apply if a link existed between the specific projects concerned and the diesel emission issue at stake (which does not seem to be the case based on the information currently available), and would only apply to the outstanding loans.

Within this context, the EIB can confirm that none of the relevant VW Group entities within the listed loans provided any information about the diesel emission issue prior to VW Group publicly informing about this issue in September 2015.

Following the announcement of allegations on VW’s possible fraudulent use of the defeat device software in diesel engines, and as publicly communicated by the EIB,⁸ the EIB has been in contact with VW to understand as rapidly as possible whether any of the EIB loans were used in the development or deployment of illegal software in cars.

Information provided by VW to the EIB within this context is part of the EIB’s ongoing review of the status and contractual aspects of its loans to VW. Accordingly, considering the EIB’s ongoing review, and the context of current investigations both outside and inside the EU regarding VW’s conduct, the EIB cannot disclose this information as it would undermine its decision-making process and may also

⁶ In line with the first and second bullets of Article 5.5 of the EIB TP.

⁷ Project Progress Reports may also be required during implementation.

⁸ <http://www.eib.org/infocentre/press/news/all/comment-on-press-reports-concerning-eib-and-volkswagen.htm>

undermine the protection of the purpose of investigation, investigations and audits within the meaning of Articles 5.5 and 5.6 of the EIB TP.

In conclusion, the EIB is pleased to provide you with the latest project completion reports available as provided by the VW Group and relating to the use of all EIB loans to the VW Group signed between 2005 and 2015, both outstanding and repaid, inside and outside the EU, and including all brands of the VW Group.⁹

Information in these documents, which is covered by the exceptions provided for in the EIB TP has been replaced by the symbol “[...]” or has been blackened out. This concerns financial and technical information which, if disclosed, would undermine the protection of the promoter’s commercial interests and its intellectual property rights.¹⁰ None of the information removed from these documents relates to the environment. Furthermore, no overriding public interest applies to the redacted sections.

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

In your confirmatory application, you claim that the EIB has failed to provide the requested information *“limiting itself to a statement of 16 October 2015 that it was inquiring about the potential links between the EIB financing and the VW emission issue, and indicate that the bank has not updated this information in its next response of 9 November 2015”*.

As part of its review, the EIB notes that its inquiries into the potential links between the EIB financing and the VW emission issue are still ongoing, and as a consequence the initial response provided on 16 October 2015 was still valid on 9 November 2015.

In conclusion, the EIB confirms its initial reply. Given that inquiries into the matter are still ongoing, the EIB does not have the requested information (whether car models in which defeat devices were installed were covered by the EIB loans) at this stage.

(4) Information on which models of VW Group were covered by the EIB loans listed in footnote 3

In your confirmatory application, you claim that the EIB has failed to provide the requested information by misinterpreting your initial application. You submit that, *“even if the loans which were subject of your 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, you submit that the EIB should have disclosed this information, if provided by VW Group.

As part of its review, the EIB acknowledges that the requested information was not provided and understands that its initial reply was meant to clarify that the main purpose of EIB’s loans at stake is the development of RDI activities as opposed to the production or manufacturing of specific vehicle models.

The EIB further notes that, when financing such RDI activities, it does not necessarily know to which specific vehicle models the related engines and technologies will be applied to, as this is firstly subject to the successful completion of the RDI activities financed by the EIB, and subsequently forms part of the manufacturer’s own commercial strategy and decisions.

Furthermore, the information, which specific car models of the VW Group might have benefitted from all of the RDI activities financed by the EIB, forms part of the EIB’s ongoing review of the status and contractual aspects of its loans to VW.

In conclusion, the EIB is pleased to note that some of the reports disclosed with this response as per point (2) above contain indications about some of the vehicle models concerned by the corresponding loans. However, the EIB is not in a position to disclose all of the requested information for all of its loans, as either it does not hold this information at this stage, or in certain cases, this information has been considered commercially sensitive by the promoter. This is covered by the second bullet of Article

⁹ Please note that, in the case of the Ducati R&D project, the loan was prepaid before project a project completion report was issued. As a result, we are pleased to provide you with the latest project progress report.

¹⁰ In line with the first and second bullets of Article 5.5 of the EIB TP.

5.5 of the EIB TP regarding the protection of the promoter's commercial interests and no overriding public interest exists for the disclosure of such information.

- (5) Were there any other loans from the EIB to VW Group from 2005-2015 which are not on the list in footnote 3

Please refer to (1) above, where the EIB has answered this question by providing the missing finance contracts for the loans from the EIB to VW Group from 2005-2015.

- (6) Information on EIB's undertakings in relation to revealed misconduct by VW Group

In your confirmatory application, you submit that the EIB "*failed to provide decent information on its undertakings in its reply of 16 October*" and has failed to provide an update in the final reply to your request. You state that the EIB's response "*cannot be considered enough to satisfy the request for information on bank's undertakings in a reference to the situation*", and that, although the EIB claimed that it was conducting a comprehensive review, it failed to provide detailed information about the scope and content of this review and exact undertakings within this review.

You further indicate that the EIB 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*", and therefore you state that the EIB has failed to comply with the Article 15(1) Treaty on Functioning of the European Union.

As part of its review, the EIB understands that an answer was provided to your initial request but that you contest the level of detail of the information provided by the EIB. The EIB also notes that a public statement on this issue was published on the EIB's website on 2 October 2015,¹¹ and that its inquiries into potential links of the EIB financing with the VW emission issue are still ongoing, and as a consequence the initial response provided on 16 October 2015 was still valid on 9 November 2015.

Furthermore, the details about the scope and content of the EIB's review, as well as its exact undertakings within this review, forms part of the EIB's ongoing analysis of the status and contractual aspects of its loans to VW.

In conclusion, the EIB is pleased to inform you that its review of the issue is comprehensive and therefore includes all ongoing investigations and legal proceedings of which the EIB is aware of, and to the extent that the EIB is able to review them.

However, the EIB confirms its initial reply and regrets to inform you that, at this stage, the EIB is neither in a position to disclose further details about the nature and scope of ongoing investigations, nor potential actions the EIB may consider taking depending on the outcome of the above investigation. Such disclosure would undermine not only the protection of the purpose of inspections, investigations and audits but also the EIB's decision making process in line with Articles 5.5 and 5.6 of the EIB TP.

- (7) Information whether the EIB plans to request new evidences from VW Group related to environmental and technical requirements of the contracts

In your confirmatory application, you submit that the EIB has failed to respond to this request for information and claim that, "*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*".

As part of its review, the EIB acknowledges that, while it referred to its previous responses to address this question and indirectly referred to its review of the situation, it did not provide a clear and specific response to this request of information.

The EIB notes that it has informed the public that it is reviewing the status and contractual aspects of its loans to VW, and that it is in contact with VW to understand as rapidly as possible whether any of the EIB loans were used in the development or deployment of illegal software in cars. The EIB also notes that this review is still ongoing. Furthermore, it should be further emphasised that VW's reporting obligations towards the EIB are clearly defined in the corresponding finance contracts.

¹¹ <http://www.eib.org/infocentre/press/news/all/comment-on-press-reports-concerning-eib-and-volkswagen.htm>

In conclusion, the EIB is pleased to confirm that, as part of its review of the situation, the EIB is in contact with VW and is requesting all the necessary information under the finance contracts, including as part of the reporting obligations under the finance contracts.

However, the EIB confirms that it is not in a position to disclose, at this stage, further details regarding its ongoing exchanges with the VW Group, as this would seriously undermine the EIB's decision making process. This is covered by Article 5.6 of the EIB TP. Also, considering several ongoing investigations both in the EU and outside the EU, any further disclosure could potentially undermine the purpose of inspections, investigations and audits within the meaning of Article 5.5 of the EIB TP.

(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

In your confirmatory application, you submit that the EIB 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"*.

As part of its review, the EIB acknowledges that it EIB did not provide a clear and specific response to this request of information.

The EIB notes that EIB RDI loans to other automotive sector companies are being subject to the EIB's monitoring and reporting obligations as defined in the EIB finance contracts, and that there is currently no evidence suggesting that any of these other companies have been engaged in similar activities. Should any information be brought to the EIB's attention suggesting similar activities, the EIB will take appropriate measures in line with the applicable policies.

In line with Article 5.33 of the EIB TP please be informed that, should you consider this reply as unsatisfactory, you have the right to appeal in line with the provisions of Chapter 6 of the EIB TP.

Sincerely,

EUROPEAN INVESTMENT BANK



Klaus Trömel
Secretary General

Attachments:

Finance contracts and monitoring reports of the following projects:

- Scania 2020 Fuel Efficiency: <http://www.eib.org/projects/pipeline/2012/20120341.htm>
- Man Trucks RDI: <http://www.eib.org/projects/pipeline/2009/20090217.htm>
- Scania Emissions Reduction RDI: <http://www.eib.org/projects/pipeline/2004/20040716.htm>
- Scania Trucks Clean Engine R&D: <http://www.eib.org/projects/pipeline/2008/20080699.htm>
- Scania Trucks RDI: <http://www.eib.org/projects/pipeline/2007/20070411.htm>
- Autoeuropa RDI: <http://www.eib.org/projects/pipeline/2007/20070067.htm>
- VW Argentina II: <http://www.eib.org/projects/pipeline/2008/20080787.htm>
- Volkswagen Antrieb RDI: <http://www.eib.org/projects/loans/2002/20020702.htm>
- Man Trucks Factory Poland: <http://www.eib.org/projects/pipeline/2005/20050501.htm>
- VW Supply Chain Latam: <http://www.eib.org/projects/pipeline/2010/20100501.htm>
- Volkswagen India: <http://www.eib.org/projects/pipeline/2009/20090004.htm>
- Ducati R&D: <http://www.eib.org/projects/pipeline/2009/20090302.htm>