

Note on EIB Information Disclosure Standards

6 July 2005

The Global Transparency Initiative (GTI) is calling on the European Investment Bank (EIB) to incorporate two main types of changes into its new information disclosure policy, to bring this into line with its legal obligations and the best practice at other international financial institutions (IFIs). The first is to base the policy on a real presumption of disclosure, whereby all information held by the institution is presumed to be subject to disclosure, subject to a narrow regime of exceptions. The second is for the EIB to formally recognise that it will disclose a wider range of operational information, and earlier in their life, than at present. This note sets out the GTI's main priorities in relationship to both of these two changes.

The NGO call attached as Annex I, signed by more than 120 networks and groups from all over the world, sets out the principles which should underpin both of these changes, and provides some detail as to how to effect the second change.

I. The Principle of Maximum Disclosure

The EIB should, in accordance with the rules set out in the *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* and Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001, among others, amend its policy with a view to putting into effect the principle of maximum disclosure. This involves four main elements, as follows:

1. The Presumption of Disclosure

The policy should be based on a presumption that all information held by the EIB is subject to disclosure upon request. As a public body, the EIB holds information not for itself, but on behalf of the public and, absent a convincing reason for secrecy, this information should be subject to disclosure.

2. The Regime of Exceptions

Notwithstanding the above, there are a number of overriding public and private interests that may justify withholding information. These include commercial confidentiality, privacy and the integrity and efficiency of internal decision-making. The policy should include a complete list of interests which may justify non-disclosure of information. This list should be clear and narrow, and indicate the precise harm which is sought to be avoided. For example, it is not legitimate simply to exclude all internal documents but it may be legitimate to do so where this would seriously undermine the provision of free and frank advice. Furthermore, the policy should include a public interest override so that where, taking into account all of the circumstances, the public interest would be served by disclosure, information should be released notwithstanding a risk of harm to a legitimate interest. This might be the case, for example, where the information disclosed an environmental risk or evidence of corruption.

3. Process Guarantees

The current policy refers to the Code of good administrative behaviour for the staff of the European Investment Bank in its relations with the public (the Administrative Code) as the basis for procedural rules relating to information requests. While this does provide a minimum platform of procedural guarantees, at the same time these are not necessarily tailored to the specific needs of information requests. For example, the timeline for responding to requests is two months, which may be extended, apparently indefinitely. This is unreasonably long and inconsistent with the practice at other IFIs. The policy should include detailed procedural rules tailored specifically to information requests.

4. Appeal

At present, requesters have a right to appeal from any refusal to disclose information to the Secretary General of the Bank and then to the European Ombudsman. This is in many ways an effective system but is problematical in practice since the procedural rules are not specific to information requests. The Ombudsman, for example, takes approximately a year to respond to complaints. While this may be appropriate for certain types of complaints, such as those relating to the environment or project affected populations, where data gathering may be complex, it is quite inappropriate for information appeals, where all that is required is an assessment of whether or not a particular document falls within the scope of the exceptions set out in the policy. Furthermore, the Ombudsman can only respond to complaints originating from inside the European Union.

II. Extending the Scope of Information Subject to Routine Disclosure

The present policy includes a list of documents subject to routine disclosure, that is documents that will be disclosed regardless of whether or not they have been the subject of a specific request. This is a positive complement to the presumption of disclosure noted above, since it provides a minimum platform of documents subject to disclosure. At the same time, the present list is too conservative, lacks specific timelines and fails to conform to standards set by other IFIs. The following categories of information should, at the very minimum, be added to the list of documents subject to routine disclosure and with clear timelines:

- the announcement and basic information (Project Information Document) of all projects, regardless of sponsor, in the pipeline for a specific period in advance of board approval;
- all relevant project documents through the whole project circle (environmental and social analysis, Environmental Impact Assessment, Project Appraisal Reports, financing and guarantee contracts, project review and monitoring reports, project completion reports).
- draft policy-setting documents, released in time for adequate public review and consultation;
- the Board's work plan, monthly calendars and agendas of meetings, as well as summaries of lending and policy discussions and
- minutes and summaries of the meeting of the Board, along with the voting record.

NGO Proposal to the European Investment Bank on Principles and Standards of Information Disclosure

June 22, 2005

I. Introduction

The European Investment Bank (EIB) is a financial institution of the European Union, subject to EU legislation but in fact it acts as an independent bank accountable only to its shareholders, the governments of the 25 EU member states.

At present, the EIB is the least transparent of all institutions established through the Treaty of the European Union, in spite of years of “dialogue” with civil society and the European Parliament about reforms. On the project level EIB denies vital information to the interested public and also to the communities affected by its financed projects. The EIB argues that its secretiveness is due to its function as a financial institution. However, a comparative study by the Bank Information Center and *freedominfo.org* both in Washington D.C.

(<http://www.ifitransparencyresource.org/en/Institutions.aspx>) reveals that the EIB is vastly less transparent in some critical areas than other public international financial institutions such as the World Bank Group and European Bank for Reconstruction and Development (both operating in public and private sectors). Often the EIB co-finances projects with the World Bank (especially its private-sector arm, the International Finance Corporation) and EBRD, and it has a global portfolio of projects, just as they do.

NGOs welcome the EIB’s recent announcement of the revision of its Information Disclosure Policy and its first-ever public consultations. However, we note with worry that the draft put forward does not improve the current situation on access to documents, but in fact goes backwards in some aspects, adding more constraints to releasing information.

We submit that the EIB should adopt a new approach to its public disclosure policy, which lives up to the spirit of Regulation 1049/2001 of the European Union and the Aarhus Convention on access to information relating to environmental issues. This new approach must ensure that communities affected by EIB projects, as well as other interested parties, are adequately and freely informed and consulted before the approval and throughout the life of projects. The current draft put forward by the EIB does little to support a presumption of disclosure, which must be the over-riding principle of a new Information Policy.

We call on the Governors of the EIB, under the leadership of its President, Philippe Maystadt, to undertake immediate steps to foster greater transparency and to ensure that public comments during the consultation process will be fully taken into consideration when preparing the new draft of the information policy.

In this document we analyze the areas that need to be changed if the new information policy is to become a tool that ensures more transparency and timely access to information that is crucial to communities and organizations affected by EIB-funded projects. Our proposals are fully supportive of the trends in EU law concerning public access to information, which the EIB should not ignore.

II. Principles¹

¹ The Principles have been elaborated using among other the Global Transparency Initiative Charter (draft document).

The EIB's Public Disclosure and Information Policy should be shaped by EU policies on transparency and public disclosure of information and related legislation, and the best practice in international financial institutions. The EIB revised policy should be founded on the following principles:

Principle 1: Maximum Disclosure of Information

The EIB's Public Disclosure and Information Policy should be based on the presumption that all information concerning the EIB's operational activities, regardless of the form in which it is held, or its source, date of creation or official status, should be disclosed. Compelling reasons for confidentiality must be clearly defined in the policy and subject to independent review.

Principle 2: Routine Disclosure of Information

In the interest of promoting transparency and efficiency of public institution and in order to facilitate public participation, the EIB should routinely disclose basic documents and all information relevant to the process of policy-making or project approval that affects the general welfare of the public or the specific interests of affected communities and organizations.

Principle 3: The Right to Request Information

The EIB should ensure that citizens are able to lodge (orally or in any written form, including electronic form) requests for information held by it, in accordance with the principles, conditions and limits defined in the policy. Requests should be accepted in local languages and information provided to the extent possible in the form and language requested.

Principle 4: Limited Exceptions

Access to information may be refused only where the EIB can demonstrate that disclosure would cause serious harm to a legitimate protected interest listed in the policy and where the harm to the protected interest outweighs the public interest in disclosure.

Principle 5: Whistleblower Protection

The EIB should ensure protection of individuals, including its own employees and subcontractors/employees, from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, so long as they acted in good faith. Wrongdoing should be defined to include the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, abuse of power or other serious misconduct, as well as financing a project that poses a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not.

Principle 6: Right to Appeal

The EIB should ensure the public's right to appeal to an independent body, when they consider that the EIB's replies to information requests violate their rights or interests. The complaints body should be granted full powers to investigate any appeal, including the ability to compel witnesses and, importantly, to require the EIB to provide it with any information needed for its consideration, in camera when necessary and justified.

In order to ensure that public's rights are fully respected, a two-stage administrative procedure should apply, with the additional possibility of court proceedings or complaints to the European Ombudsman.

Principle 7: Promotion of Freedom of Information

The EIB shall take all possible measures to ensure proper implementation of the public's right of access to information, including among others staff training, an effective and progressive system of record management, a central system for tracking requests, providing for individual sanctions for willful obstruction of access to information, publishing and widely disseminating an annual review of the implementation of the openness policy, and regular internal audits.

Principle 8: Regular Review

The EIB's Public Disclosure and Information Policy should be subject to continuous evaluation, quality assessment and regular review on a three-year cycle, and improved accordingly.

III. From Principles to Practice

A. EIB Strategies, Policies and Procedures

The Board of Directors at the European Investment Bank approves a wide range of high-level overall plans that outline the general goals, administrative functioning and procedures. However, until now none of them has been the product of an open and public dialogue, or been subject to any public scrutiny during their drafting, implementation, and review. Within this context, the EIB remains far behind current practices of other international financial institutions such as the European Bank for Reconstruction and Development and the World Bank Group. The currently announced revision process of EIB's Information Policy is a welcomed first step towards development of strategies, policies and procedures in a more open and transparent manner.

1. Formulation of Policy or Strategy

The EIB's Public Disclosure and Information Policy should provide citizens the opportunity to understand the formulation process of any document. Advance announcements on the intentions to consider such a policies need to be provided, as well as information on how and when the decision will be made and how the public will be consulted.

2. Revision of Policy or Strategy

The current EIB Information Policy – contrary to other International Financial Institutions – does not provide any framework for reviewing EIB documents of significant public interest. Following the best available practices, the EIB's new Public Disclosure and Information Policy should define categories of documents for review and clear rules for public participation within the process.

Recommended Transparency Standards:

- The EIB should maintain a running list of policies and strategies it expects to review in the coming 12 –24 months, posted on the website.
- Immediately upon the development or review of a policy or strategy, the EIB should disclose a detailed plan outlining the nature and scope of the process and the opportunities for public review and comment.
- The materials that will go into the decision-making, including management evaluation of existing policies, relevant background information, and external comments should be disclosed.
- Drafts of proposed policies and strategies should be released for public comments at least 60 calendar days prior to discussion by the EIB's Board. In this regard, management should proactively stimulate stakeholders' interest in, and contributions to, the drafting process of these policies.

- External comments on a given policy or strategy should be publicly available on the website.
- At the end of the consultation period, the Management should post on the website a synthesis of comments received, along with the EIB's responses to these comments.

3. Approval of Policy or Strategy

During the final stages of the policy or strategy review process, citizens should be able to determine how, if at all, their comments were incorporated into the proposed new document. This will put them in a position to communicate any outstanding concerns to their government and Board representatives prior to the approval of the policy or strategy.

Recommended Transparency Standards:

- Final draft policies and strategies should be disclosed at the same time they are circulated to the Board of Directors for consideration, but no less than 30 calendar days prior to approval.
- A synthesis of the recommendations received during the public consultation process and rationales for their inclusion or rejection into the final draft policy or strategy should be disclosed and attached to the final draft sent to the Board of Directors for consideration.

4. Implementation and Supervision

The EIB's examination of current policies and strategies provide valuable data on their effectiveness and are critical elements in the ongoing process of policymaking. The public should have access to the same materials that the EIB uses to monitor and evaluate policies.

Recommended Transparency Standard:

- Reviews related to the implementation of policies or strategies should be publicly disclosed.

B. Project-related Information

Our recommendations regarding public disclosure of project-related information are based on the following key principles, which the EIB should adopt and follow:

- People and communities affected by a project have a fundamental right to be informed in a timely way about decisions that affect their lives, and to have an opportunity to participate in decision making by making their views known to decision makers prior to any decision being made.
- Timely disclosure of information will help the EIB to capture a broader range of input, which will improve the design of projects by allowing stakeholders to draw the EIB's attention to possible false assumptions and unintended impacts.
- Providing information regularly during loan implementation will improve the monitoring of project performance.
- Transparency in resource allocation will deter corruption and support those in borrowing countries who are attempting to improve governance and the efficient allocation of resources.

1. Advance Information on Projects

For each of the projects proposed for financing, the EIB should prepare and disclose a Project Information Document. This should contain all important basic information about the project, including any environmental or social impacts that could arise as identified by the screening process.

The Document should also include details such as the expected date of the Board decision, the estimated date of signing the loan agreement as well as the contact details of the implementing agency and of the staff person at the EIB responsible for the project.

Recommended Transparency Standards:

- Project Information Documents should be disclosed as early as possible during project development, preferably immediately following project concept review. Without exception, the EIB Public Disclosure and Information Policy should define a time period of a minimum 120 days prior to Board approval for releasing Project Information Documents for both public and private sector projects.

2. Social and Environmental Analyses

The EIB should ensure timely public access to all important documents related to projects that could have adverse social and environmental impacts. Assessments should be conducted in a transparent way, including input from, and regular feedback to, affected communities and other stakeholders. There should not be an artificial distinction between the release of documents related to project adverse impacts for public and private sector. For example, the Asian Development Bank’s environmental policy states: “The 120-day rule applies to all public and private sector category A and selected category B projects deemed to be environmentally sensitive.”

Recommended Transparency Standards:

- The environmental and social analysis for medium-impact projects should be publicly available for a period of 60 calendar days before Board approval.
- The environmental and social analysis for high-impact projects should be publicly available for a period of 120 calendar days before Board approval.
- The EIB should either release the full Environmental Impact Assessment on its own web site or require release on the project promoter’s web site.

3. Project Approval Information

The EIB, as a public institution, should proceed with project approval in a transparent manner. Most of the International Financial Institutions already agree to publicly announce upcoming Board discussion of the loans and disclose main technical documents describing a loan, which is submitted to the institution’s decision-making body prior to their vote on whether to approve or reject a project. For example, public disclosure of a project Report and Recommendations of the President of the Asian Development Bank, Project Appraisal Reports of the African Development Bank, and Project Appraisal Documents of the World Bank is required as standard practice.

Recommended Transparency Standards:

- The EIB Public Information and Disclosure Policy should require notification of the Board’s intent to consider a project as a part of the Project Information Document (see section B, paragraph 1).
- The project appraisal report, submitted to the decision-making body for approval, - subject to redaction of commercially sensitive information - should be disclosed on the EIB website at the point it is sent to the Board but no later than 30 days before Board consideration.
- The EIB, without any exceptions, should issue an announcement that a given project has been approved as soon as approval occurs.

4. Financing and Guarantee Contracts

The financial agreements between the public bank and a borrower should not be a subject of confidentiality, unless it is proved that its disclosure would pose harm to public or commercial interests.

Recommended Transparency Standard:

- The EIB should disclose upon request – subject to redaction of commercially sensitive information – all financing and guarantee contracts.

5. Project Reviews and Supervision Reports

The public should have access to information about the degree to which a given project is proceeding according to expectations, as well as any unexpected social and environmental impacts associated with the project. There are several examples of current IFI practices regarding the disclosure of project review documents. Among others: Summary of Environmental Status and Implementation (European Bank for Reconstruction and Development), Annual Report of Projects Execution (Inter-American Development Bank), Status of Projects in Execution (World Bank).

Recommended Transparency Standard:

- The EIB should disclose all supervision reports from the staff responsible for a project, including environmental and social monitoring reports.

6. Project Completion and Evaluation

It is important to inform the public about the project or operation results as well as EIB's evaluation and assessment of its implementation of various aspects, including environmental mitigation and resettlement. For example, according to the World Bank's Policy on Disclosure of Information, Implementation Completion Reports are publicly disclosed after they have been distributed to the Executive Directors.

Recommended Transparency Standard:

- The EIB should disclose Project Completion Reports.

7. Information on Global Loans:

All the above mentioned standards should be applicable also to Global Loans. Specifically the publicly available information must include the conditions agreed between the EIB and the intermediary, in particular the purpose of eligible projects, criteria for approving of the projects by intermediaries (including environmental standards) and methods of promotion of the loans among SMEs. Project Reviews and Supervision reports as well as completion report for a global loan should include full list of final beneficiaries, short description of supported projects and information on the return of borrowed resources.

C. Information on the Board Agendas and Discussion

The current closed nature of the EIB's Board of Governors and Board of Directors meetings does not allow taxpayers and citizens to find out how they are being represented. In general, EU citizens should be able to know in advance what will be discussed by the Board, review policy setting documents prior to meetings, and convey their views to their respective Governor or Executive Director.

Recommended Transparency Standards:

- The EIB should provide the public with information about the operations of the Board, such as the Board's work plan, monthly calendars and agendas of meetings, as well as summaries of lending and policy discussions.
- Minutes and summaries of the meeting of the Board with the Record of Vote should be disclosed.
- Transcripts of Board meetings should be kept and disclosed 5 years after issuance.

This statement is supported by:

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CEE Bankwatch Network
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FERN
Friends of the Earth Europe

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Global Transparency Initiative
Advancing Public Interest Trust (APIT), Bangladesh
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Friends of the Earth Finland,
Friends of the Earth Scotland
Friends of the Earth Sweden
FUED, Morocco

Fundacja Biblioteka Ekologiczna, Poland
 Galga Environmental Association, Hungary
 Green Action Association, Hungary
 Green Alternative, Georgia
 Green Circle of Pécs, Hungary
 Green Federation Gaja, Poland
 Green Globe Sport Club, Hungary
 groundWork, South Africa
 Habitat Council, South Africa
 HELIO INTERNATIONAL Sustainable Energy Watch, France
 Herman Ottó Environmental Education Centre, Hungary
 Hnutí Duha, Czech Republic
 House of Water and Environment, Palestine
 Hungarian Network of Eco-counselling Offices, Hungary
 Idasa, South Africa
 Independent Ecological Center, Hungary
 InfoECOclub for Healthy Environment, Bulgaria
 Institute for Environmental Economics, Poland
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 KOSA - Czech Coalition of Consumer Activities, Czech Republic
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 Les Amis de la Terre, France
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