

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

June 1, 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

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

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

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
European Federation for Transport & Environment
FERN
Friends of the Earth Europe
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Global Transparency Initiative

Advancing Public Interest Trust (APIT), Bangladesh
Afro-European Consortium, Netherlands
Amici della Terra, Italy
Amigos de la Tierra España, Spain
Arnika, Czech Republic
Article 19, Canada
Asociatia "Valea Soarelui", Romania
Association des juristes camerounais de l'environnement, Cameroon
Balkani Wildlife Society, Bulgaria
BanglaPraxis, Bangladesh
Bank Information Center, USA
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Buds Foundation for Human- and Nature Protection, Hungary
Bulgarian Lepidopterological Society, Bulgaria
BUND, Germany
Campagna per la riforma della banca Mondiale, Italy
CEDHA, Argentina
Center for Ecology and Sustainable Development, Serbia & Montenegro
Central and East European Working Group for the Enhancement of Biodiversity (CEEWEB), Hungary

Centre for Environmental Information and Education, Bulgaria
Centre pour l'Environnement et le développement (FoE Cameroon), Cameroon
Centrum pro dopravu a energetiku, Czech Republic
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Ceratonía Foundation, Malta
Clean Air Action Group, Hungary
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Community 'Atgaja', Lithuania
Corporate Europe Observatory, Netherlands
Csalán (Nettle) Environmental and Nature Conservation Society, Hungary
Development Services International, Netherlands,
Dolnoslaska Fundacja Ekorozwoju, Poland
"Earth forever" Svishtov, Bulgaria
Earthlife Africa, South Africa
ECA-Watch Campaign, Austria
EcoPeace Friends of the Earth Middle East
EJNF, South Africa
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Environmental Association "Elm Tree", Bulgaria
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Federation of Hungarian Associations for Asthmatic & Allergic Patients, Hungary
Finnish NGO Campaign for ECA Reform, Finland
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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
Herman Ottó Environmental Education Centre, Hungary
Hnuti 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
Institute for Sustainable Development, Poland
Klub Gaja, Poland
KOSA - Czech Coalition of Consumer Activities, Czech Republic
Latvian Green Movement, Latvia
Legal Rights & Natural Resources Center, FoE Philippines
Les Amis de la Terre, France
Magosfa Foundation, Hungary
Moroccan of Population and Environmental Education (CMEPE), Morocco

Mouvement Ecologique – Friends of the Earth Luxembourg
National Ecological Centre of Ukraine, Ukraine
National Society of Conservationists, Hungary
Nimfea Environment and Nature Conservation Association, Hungary
Osrodek Dzialan Ekologicznych Zrodla, Poland
Oziveni, Czech Republic
Polish Ecological Club, Poland
Polish Green Network, Poland
Pratele prirody CR/Friends of Nature, Czech Republic
Reflex Environmental Association, Hungary
Réseau Action Climat, France
Sashegy Nature Conservationists Association, Hungary
Spoleczny Instytut Ekologiczny, Poland
Society for the Earth, Poland
Stowarzyszenie na Rzecz Ekorozwoju 'Agro-Group', Poland
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Young Researchers of Banja Luka, Bosnia & Hercegovina
Youth Conservationist Association of Hajdúböszörmény, Hungary
Zachodniopomorskie Towarzystwo Ornitologiczne, Poland
Za Zemiata, Bulgaria
Zeleny kruh/Green circle, Czech Republic