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Complainant:

On behalf of
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Complaint on the refusal to release environmental information on CHP Bielsko Biala project in Poland financed by the European Investment Bank

On the 21st December 2010 CEE Bankwatch Network requested European Investment Bank to disclose the document which contained calculation referring to 20% decrease in the carbon intensity of the power plant CHP Bielsko-Biala as well as information which of the existing generation units would be phased-out on what particular dates. In its request Bankwatch expressed that it had not been able to find that information in the environmental impact assessment study while this information was necessary to understand how the bank applied screening criteria for the coal power plants stemming from its policy document „*Clean Energy for Europe: A Reinforced EIB Contribution*” (page 3 and 4).

The EIB's answer to our request for information from the 21st December 2010 came on the 26th January 2011. Although the Bank has provided CEE Bankwatch Network with the documents from the investor, like environmental permit, construction permit and the non-certified translation in English of the project's EIA, it has refused to provide information on the carbon intensity of the energy produced in the new unit and on the exact dates of phasing-out existing units arguing that this is covered by the confidentiality agreement signed with the promoter, and would form part of the Bank's confidential relationship with its business partners under the exceptions for disclosure described in §§ 5.2.3 and 5.2.8, Part A of the Bank's Transparency Policy.

On the 8th February 2011 CEE Bankwatch Network sent a confirmatory application on the basis of the Art. 7 point 2 of the Regulation 1049/2001 and requested the EIB to reconsider its position in terms of disclosure of environmental information. On the 9th March 2011 the Bank informed CEE Bankwatch Network that it was proceeding with the confirmatory application and it would answer as soon as possible. On the 10th of March 2011 the South Poland CHP project was approved by the EIB's Board of Directors.

Until now the Bank has not responded to the confirmatory application with a decision to release requested information or refuse releasing it therefore CEE Bankwatch Network decided to file a complaint to the Complaints Office.

According to Article 1 point 1a of Regulation 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, the public has the right of access to environmental information received or produced by the Community institution. Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents establishes exceptions to the general rule that all documents should be accessible to the public. According to Article 4 point 2 of the Regulation 1049/2001 institutions shall refuse access to a document where disclosure would undermine the protection of, among others, commercial interest of natural or legal person, unless there is an overriding public interest in disclosure. According to the point 5.2.5 of the Bank's Transparency Policy and Article 6 point 1 of the Regulation 1367/2006 an overriding public interest in disclosure shall be deemed to exist where the information requested relates to the emissions into the environment.

According to point 68 of the Environmental and Social Practices Handbook, the Bank already on the pre-appraisal stage, analyses the emissions of carbon dioxide from the project under appraisal. Moreover in its energy policy document „*Clean Energy for Europe: A Reinforced EIB Contribution*“, page 3 and 4, the Bank states that it would apply screening criteria for all proposed coal power stations, including the one saying that new plants should replace existing coal power stations while providing a decrease of at least 20% in the carbon intensity. Despite being subject to the formal requirement to calculate the carbon intensity of proposed project, in its letter of 26th January 2011 the EIB informed CEE Bankwatch Network that „*calculations of the project's estimated carbon intensity reductions are not contained in specific concise and finalized documents at this stage of the appraisal*“.

Furthermore the Bank argued that its calculations are based on the Bank's own know-how and on the information provided by the promoter, which was covered by the confidentiality agreement signed with the promoter, and would form part of the Bank's confidential relationship with its business partners under the exceptions for disclosure described in §§ 5.2.3 and 5.2.8, Part A of the Bank's Transparency Policy. The Bank further explained that after consulting with the borrower it could inform about an increase in the overall efficiency of a plant from around 60% to around 90% what gives, easy to calculate, 25% reduction in comparative carbon intensity.

The Bank also explained that the same constraints described above would apply for the disclosure of information regarding the time-line for the existing unit's operation and referred to the borrower's indication on application of Large Combustion Plant Directive (LCPD).

CEE Bankwatch Network is dissatisfied with the EIB's response to its request for information. CEE Bankwatch Network request from 21st December 2010 relates to the emissions into the environment to the extent it asks for disclosure of information on carbon dioxide emission (or carbon intensity) from the installation which is a subject of the EIB financing and therefore an overriding public interest in disclosure shall be deemed to exist. The Bank should not have entered into the confidentiality agreement with the project promoter over the information on carbon intensity of the installation.

In our opinion the Bank was obliged to calculate carbon dioxide emission and to properly document its calculations in the project's documents. The EIB admitted that it conducted calculations of carbon intensity based on its own know-how and information provided by the borrower but it did not possess any concise and finalized document containing the calculations. In our opinion this constitutes a violation of the Article 24 of the European Code of Good Administrative Behaviour stating that „*the Institution's departments shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take*“. It should also be a duty of the Bank to properly document all stages of the project appraisal process for the purpose of further project administration.

The EIB has also failed to explain its methodology of calculating the overall efficiency of a plant. It is impossible to review the accuracy of the data provided (increase of overall efficiency

from 60% to 90%) and contrary to the Bank's suggestions, it is not possible to conclude 25% reduction in comparative carbon intensity on the basis of the data provided.

CEE Bankwatch Network does not share the EIB's interpretation that information regarding the time-line for the existing unit's operation constitutes confidential information of the project promoter. Such information is crucial to the public to be able to assess (or review the project promoter's assessment) cumulative impact of all the power plant's blocks on the environment. Such information is also necessary to review whether the Bank's own screening criteria for coal power plants projects described above were applied. Information provided by the EIB, referring to the Large Combustion Plant Directive (LCPD) is not satisfactory as it only informs about the general legal requirements which complainant is aware of and it does not provide information related specifically to the installation which is to be financed by the bank.

Concluding, according to CEE Bankwatch Network the European Investment Bank committed an instance of maladministration when refusing access to environmental information on CHP Bielsko Biala project in Poland. It failed to justify refusal of access to the requested information, failed to respond to the confirmatory application in a timely manner, failed to keep record of the project's screening against policy based criteria and failed to keep record of the project appraisal process. CEE Bankwatch Network demands the bank to disclose the requested information.

A copy of the correspondence with the Bank is attached to this complaint.

Your sincerely,

Energy Campaigner
CEE Bankwatch Network

Attachments:

1. CEE Bankwatch Network request for information dated 21st December 2010
2. EIB's acknowledgement of receipt dated 21st December 2010.
3. The EIB's letter dated 26th January 2011
4. CEE Bankwatch Network confirmatory application dated 8th February 2011
5. Acknowledgement of receipt of the confirmatory application dated 8th February 2011
6. The EIB letter dated 9th March 2011