



Center for Human Rights and Environment

Comments to Public Disclosure and Information Policy

Of the European Investment Bank

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Introduction

The Center for Human Rights and Environment (CEDHA), an Argentine-based Non Governmental Organization (NGO), would like to commend the European Investment Bank (EIB) for its decision to review and improve its Disclosure and Information Policy and for initiating a process of global stakeholder consultation on this matter. Attached are general and text-specific commentaries from our institution. We hope that you will take these suggestions as constructive criticism as you progress through the consultation process.

The EIB's willingness to open up its policy review process to stakeholder consultation provides a critical opportunity to gather expert opinion from around the world, to help steer, set and raise development standards and benchmarks guaranteeing the respect for human rights, as well as improving social and environmental conditions where EIB invests its funds. As a European Union (EU) institution, the EIB must abide by EU policy, regulations, laws, and treaties, many of which make explicit reference to human rights and international law commitments of the EU and EU member states. We hope to see that EIB policy clearly state commitments to, and set its standards according to such obligations. The present document fails to make such reference in key sections where such statements would help raise the bar on EIB and other EU banking sector development standards and policy.

Guiding Principles that should imbue this revisions process and EIB Policy

We have identified four principal areas and issues where the EIB's Disclosure and Information Policy needs to be strengthened.

I. Streamlining EIB Policy in a Human Rights Framework, with Human Rights Language and Context

Streamlining EIB policy in a human rights framework would orient EIB activity towards the *explicit* objective of helping beneficiaries of EIB projects to *realize universal human rights* such as the right to health, property, food, and even life. Such a "rights based approach to development", is becoming the core focus and objective of many development programs and country foreign assistance development strategies. This trend and direction posits a clear paradigm shift of development structures towards attaining *rights-based* objectives and ensuring many economic, social and cultural rights today unrealized by many of the world's poor. The EU and many of its member states, have already made important strides in advocating this direction. The EIB's Disclosure and Information Policy review process is a most opportune moment for the EIB to formally adopt human rights objectives and clear rights-based language that should include specific references to *stakeholder rights* and *institutional obligations to comply with and ensure such rights*. In order to achieve this objective, the EIB's Disclosure and Information Policy should firstly and upfront, *explicitly recognize the primacy of human*

rights and the *protection of human life* above all other priorities. This commitment should be stated above the objectives and assurances, for example, that the EIB gives on client or Bank confidentiality (which presently sets the dominant tone and message of the policy draft). The EIB, on this point must clarify that respecting confidentiality should in no way place human life or human rights realization at risk.

II. Upholding of EU Law and Treaties

The EIB's Disclosure and Information Policy **should at a very minimum make explicit references and commitments of the EIB to “uphold obligations” as set out by EU laws, regulations and treaties, for example, (but not limited to) Article 255 of the EU Treaty, Regulation 1049/2001, Council and Commission Documents, the Aarhus Convention, etc.** These laws and treaties are presently treated as “reference” documents in the policy, when they should be cited as “binding law” and “obligations” with respect to disclosure and access to information. In addition, the EIB's Disclosure and Information Policy must be defined considering, and in harmony with, advances already made in parallel forums, treaties, international law, intergovernmental institutional policy and even national laws. EIB's policy should explicitly refer to and be in line with the highest attainable standards available in forums of similar reach and political relevance, especially advances and commitments made by other banking sector institutions of similar scope and relevance (such as the World Bank Group agencies, other regional inter-governmental banks, the Equator Banks, et.al.). The EIB must also make explicit reference in its policy to uphold commitments to *inform on environmental matters* (as per obligations under the Aarhus Convention) and ensure sustainable development (as per its three economic, environmental, social dimensions).

III. Guarantee Access to Justice in Process

EIB's Disclosure and Information Policy should at the very minimum establish clear language, commitment and transparent and independent administrative process to ensure access to justice channels to all stakeholders affected by EIB investment, irrespective of whether they are EU residents or citizens. Presently, the only references to access to justice provided for in paragraphs 28 and 29 of the draft policy are insufficient, and suggest that access to justice is only administered through in-house mechanisms (the EIB's Secretary General); reference to access to justice must state stakeholder rights, offer non-partisan, transparent, and effective mechanisms and alternatives, not presently offered in the present draft policy.

IV. Protection of Third Party Stakeholders and Vulnerable Groups

The EIB should explicitly guarantee the highest level of standards, recognizing and respecting the rights of stakeholders and vulnerable groups in countries where the EIB invests, (and the legislation of such countries) recognizing the rights of Third Parties

(including non EU stakeholders abroad) and ensuring extended treatment of and protection to vulnerable groups. Groups such as indigenous communities and the poor are especially vulnerable to the types of projects financed by the EIB investments, and hence, the EIB should always take an extra step and hold a higher bar in its development work and activities when the interests of vulnerable groups are at stake.

Comparison to Best Practice in the Banking Sector

We commend the EIB for its commitment (as per paragraph 16) to “keep its disclosure and information policy in step with best practice in the banking sector”. We offer below a simple matrix comparing issues of transparency, disclosure and access to justice between the EIB and other leading development bank institutions, showing areas where the EIB must improve its present standards, which fall below “best practice in the banking sector”.

	World Bank	IDB	ADB	IFC	EIB
Presence of a human rights framework	Yes, The adoption of poverty reduction and activities to promote economic growth, social develop and protect the environment	Yes, The adoption of poverty reduction and activities to promote economic growth, social develop and protect the environment	Yes, The adoption of poverty reduction and activities to promote economic growth, social develop and protect the environment	Yes, IFC has embarked on an integrated review of its Safeguard Policies, Policy on Disclosure of Information, and Environmental, Health & Safety (EHS) Guidelines.	None ¹
Stakeholders affected by projects have access to a complaint mechanism	Yes, the Inspection Panel	Yes, the CCRM	Yes, the Compliance Review Panel	None	None ²
Presence of local points of consultation in countries of investment	Yes, there is a PIC (Public Information center) in some strategy place	Yes, you can visit IDB’s offices and discuss projects with project staff	Yes, through the PIC (Public Information center)	Yes, regional consultation workshops for all IFC stakeholders.	None ³
Consultations possible in local language	Yes	Yes	Yes country	Yes	No ⁴
Primacy of Confidentiality of Client Secret over public interest.	No	No	No	No	Yes ⁵

¹ The document only mentions that the operations bank are guided by EU policy (and respond to the EU’s policy-making and legislative bodies)

² Complaints only can be sent to the General Secretary, in a written form to the address of the Secretary.

³ Stakeholders can only send a letter to the General Secretary.

⁴ Consultation can only be made in an official language (English, French and German)

⁵ In the Article 4 from the Rules on Public Access to Documents, mention the primacy of the privacy interest and the professional secret. In addition, a long the all document it is possible to observe this primacy.

Paragraph by Paragraph Comments

(Note to reader: CEDHA's suggested wording is in "quotations", with changes or additions in **bold**; Additional comments to the EIB on its policy and needed reform, are in [])

Introduction

P1. "The public has the **right** to access information ... [not a "legitimate interest" as the document presently reads; this paragraph should state that this right emanates from the relevant EU laws and treaties] ... The first objective of the Bank's Public Disclosure and Information Policy is therefore to **ensure that all stakeholders are properly informed about the potential risks, possible social and environmental impacts of EIB's investments. Secondly, the objective of the policy is to provide as much information as possible on how it operates ...**"

P.2 [No comment]

P.3 "The EIB regards the development ... and responsive to public comment **and stakeholder participation.**"

P.4 [No comment]

P5. [No comment]

Policy Framework

P.6 "EU policies and legislation A key reference document **to which the EIB must adhere and which serves as legal framework for all EIB operations and policy** is Regulation 1049/2001/EC on ..."

P.7 [We would add at the end of this paragraph, the sentence]. "**The EIB's respect of client confidentiality in no way should hinder its responsibility to ensure the protection and guarantee of human rights, or in no way should withhold information about risk to human life**".

P.8. "The EIB also respects the tenor and aims of **and abides by** the Aarhus Convention ..."

P.9. [we would add at the end of this paragraph, continuing the present sentence] "**The EIB must respect all EU Law, treaties and international treaties signed by the EU and its member states, as well as the national laws and international treaties signed by the countries in which it invests.**"

P.10. [we would add at the end of this paragraph, continuing the present sentence] "**The autonomy of the EIB shall never promote, support or result in the violation the law, international law or Humans Rights.**"

P.11 [No comment]

P.12 “EIB operations are guided by EU Policy **and framed under EU Law**. ... The EIB follows the policy positions of the European Union’s political and legislative bodies **and abides by the laws established in and adhered to by the EU and its member states**”. ...”

P.13 [No comment]

P.14 [No comment]

P.15 [No comment]

P.16 “The EIB is committed to keep its disclosure and information policy in step **and up to par** with best practice in the banking sector, **including practices of the principle international financial institutions (the World Bank Group and its agencies and other regional development banks, for example)**.”

Policy Principles and Procedures

P.17 [No comment]

P.18 [No comment]

P.19 [No comment]

P.20 [“best banking practice” is a vague term which may lead to loose and arbitrary interpretations]

P.21 [we would continue this paragraph with the following phrase] **“as well as respect the cultures and cultural diversity of the countries and communities affected by its investments”**.

P.22 [we stress the importance of clarifying in this section, that exceptions for disclosure must be clear, and strictly limited, and must not occur when human life issues or environmental harm are at stake]

P.23 [No comment]

P.24 [we suggest adding to this paragraph and policy that] **“When EIB investments take place in countries with languages other than the EIB’s official languages, the EIB will make project documents relevant to stakeholders, available in the local language and offer such documents to stakeholders in an accessible format and at accessible local access points.”**

P.25 [No comment]

P.26 [No comment]

P.27 [No comment]

P. 28 [We would recommend rewording this paragraph to something as follows] **“The EIB will guarantee transparent and effective access to justice procedures concerning its disclosure of information for persons of the EU and for stakeholder communities in countries outside the EU where the EIB invests. Where appropriate the EIB will handle complaints from stakeholders concerning the operations of EIB’s disclosure and information policy through the Bank’s Secretary General, or offer alternative resolution mechanism options such as through the European Ombudsman, or defer the complaint to another appropriate EU or other justice agency.”**

P.29 [we suggest that the EIB state and offer access to justice through the Ombudsman (or to some alternative independent mechanism, to community stakeholders in countries where they invest, irrespective of whether they are EU members or not]

P.30 [we suggest adding to this paragraph] **“The EIB will also offer public consultation and meaningful public input and participation in its policy review processes’.**

Website

- P.31 [No comment]
- P.32 [No comment]
- P.33 [No comment]
- P.34 [No comment]
- P.35 [No comment]
- P.36 [No comment]
- P.37 [No comment]

Info Desk

P.38 [we suggest that the EIB consider establishing regional and local public information centers in the countries where it makes investments]

Investor Relations

- P.39 [No comment]

Publications

- P.40 [No comment]
- P.41 [No comment]

Statutory Documents

P.42 [No comment]
P.43 [No comment]
P.44 [No comment]
P.45 [No comment]
P.46 [No comment]
P.47 [No comment]
P.48 [No comment]
P.49 [No comment]
P.50 [No comment]

Corporate Strategy, Policies and Procedures

P.51 [No comment]
P.52 [No comment]

P.53 [we would add in the first sentence of this paragraph] “Transparency is one of the Bank’s main strategic corporate objectives, reflecting its role as the EU’s policy-driven bank, **and stating the EIB’s commitments to ensure stakeholder rights of participation and access to information on Bank projects that affect their interests**”.

P.54 [No comment]
P.55 [No comment]
P.55 [No comment]
P.56 [No comment]
P.57 [No comment]

P.58 [We would add a phrase to this paragraph as follows]. “**The EIB will adhere to its obligations under the Aarhus Convention to disclose information pertinent to EIB projects having impact on the environment**”.

P.59 [No comment]

Lending Activities

P.60 [No comment]
P.61 [No comment]
P.62 [No comment]

Capital Market Activity

P.63 [No comment]
P.64 [No comment]

P.65 [No comment]

Disclosure of Project Related Information and Documents

P.66 [No comment]

P.67 [We would add a phrase and policy indicating that] **“The EIB will disclose project information [or the appropriate project summary or document name] [60, 90, or 120 days][the amount of time should be reasonable for stakeholders to make informed opinions] before board discussions on such projects.”**

P.68 [No comment]

Confidentiality

[We would add a point to this section, possibly replacing paragraph 70, indicating that] **“The EIB’s commitment to confidentiality in no way shall hinder its obligations to respect and ensure human rights or protect human life, or to abide by EU laws or international law, and will hold the respect for human life above its commitment to ensure client confidentiality”**. [Confidentiality must be an exception and circumstances warranting confidentiality must both clearly established, limited and restrictive.]

P.69 [No comment]

P.70 [we would eliminate this paragraph, as it adds no meaningful policy input, but rather focuses on mere hypothetical risk; we suggest replacing this point with a paragraph as cited above at the beginning of this section]

P.71 [we would add a phrase at the end of the bullet “other internal documents forming part of the decision-making process on a project] **“as long as such documents do not reveal issues or risks to human life or potential environmental harm”**.

P.72 [we would add at the end of this point] **“and encourages project promoters to reveal all information relative to potential stakeholder and environmental impacts projects”**.

P.73 [No comment]

P.74 [we suggest adding a phrase and policy to this point at the end of the sentence] **“and shall provide all social and environmental impact information requested by stakeholders relative to EIB projects approved for financing”**.

P.75 [we recommend greater clarity on what is meant by “where projects raise considerable public interest”; such clarity should include at a minimum **projects which have expected social and environmental impacts and risks**]

P.76 [No comment]

P.77 [No comment]

P.78 [No comment]

P.79 [No comment]

P.80 [No comment]

P.81 [No comment]

Disclosure of Borrowing-Related Information and Documents

P.82 [No comment]

P.83 [No comment]

P.84 [No comment]

P.85 [No comment]

P.86 [No comment]

P.87 [No comment]

Relations with the Press and Other New Media

P.88 [No comment]

P.89 [No comment]

Civil Society Relations, Including NGOs

P.90 [we recommend that this section state the EIB’s commitment to ensure and guarantee civil society access to available and accessible EIB information, access to pertinent stakeholder information, as well as guaranteeing access to justice mechanisms for cases where such access and opportunity has been obstructed by the EIB]

Conferences and Exhibitions

P.91 [No comment]

Audio-Visual Materials and Library Facilities

P.92 [No comment]

P.93 [No comment]

P.94 [No comment]

P.95 [No comment]

EIB Activities

P.96 [No comment]

Rules on Public Access to Documents

[we recommend that this part of the policy specifically include “Public Access to Documents **and Information**”]

- 1) [No comment]
- 2) [No comment]
- 3) [No comment]
- 4) [No comment]
- 5) [No comment]
- 6) [No comment]
- 7) [No comment]
- 8) [No comment]

9) [we recommend adding a sentence at the end of this point indicating] **“The EIB’s commitment to confidentiality in no way shall hinder its obligations to respect and ensure human rights or protect human life, or to abide by EU laws or international law, and will hold the respect for human life above its commitment to ensure client confidentiality”**.

10) [we suggest to include some disclaimer as indicated in point “9” immediately above in this point “10”]

11) [No comment]

12) [we suggest adding the bold text to this phrase] “ ... the Bank is committed to applying an active information policy, **favoring full disclosure, and abiding by disclosure obligations as per EU Law, regulations, and international treaties, promoting disclosure where social and environmental impacts are at risk**, and will continue and strengthen its efforts to provide the public with information on its strategy, ...

[Additionally we suggest to Add one paragraph point “13”, concerning EIB disclosure obligations under the Aarhus Convention]

Article 1 – Scope

[We suggest in this section that the scope be extended to] **“Include stakeholders from countries and communities outside the EU in which the EIB invests and which have legitimate concerns over the social and environmental impacts of such investments”.**

[Article 1.1 we suggest wording to say “access to **information and the bank** documents ...”]

[Article 1.3 we suggest wording to say “Document **and Information** shall mean ...”]

Article 2 – Applications

[No comment]

Article 3 – [we suggest] Third Party documents **“and information”**

“Where the Bank is approached with an application in respect of a document or information ... from examination of the document or information ... in the light of”

Article 4 – Exceptions

[We suggest that this section include a point indicating that] **“In cases where human life is at risk, exceptions shall not be granted.”**

[we suggest greater clarity in defining “public interest”, “privacy and integrity”, “commercial interests”, “professional secrecy”, to avoid arbitrary or unwarranted exceptions/interpretations.]

Article 5 – Access following an application

[Article 5.1 we suggest “The applicant shall have access to documents **and information** either by ...]

[Article 5.2 we suggest “Documents **and information** shall be supplied ...]

[Article 5.3 we suggest “If a document **or other information** has already been released ... how to obtain the requested document **or other information”**]

Article 6 – Reproduction

[we suggest “... or exploited released documents **or other information”**]

Article 7 – Costs

“An applicant may be charges a reasonable fee to cover the costs arising from the making available of documents or other information requested”

Article 8 – Recourse

[No comment]

Article 9 – Final Provisions

[No comment]

