

Thank you very much for the opportunity to provide some brief comments on the EIB's draft Disclosure Policy.

I congratulate EIB on taking the step of consulting the public on its draft Disclosure Policy. Disclosure of information is increasingly seen as a key aspect of appropriate governance and operation of institutions and particularly those, like the EIB, that use public funds. EIB's decision to listen to its many constituents is an important demonstration of its commitment to transparency, an important acknowledgment of the increasing importance of stakeholder input and finally, an important precedent for the development of future EIB policies.

1. *Relationship among the Documents*



Is this the right hierarchy for the EIB documents?

If this is the case then it would be useful to:

- draw an explicit link and clearly define the relationship among the documents, as this is not entirely clear in the current set of documents
- clearly distinguish between principles, policies and rules of implementation, as currently there is a bit of a mixing of all three in the documents
- clarify why it is necessary to have both a Transparency and Disclosure Policy as it is not clear why these are treated separately (it is very difficult to know if the institution is being transparent if information is not disclosed ...)
- clarify how the objectives of the Disclosure Policy have driven the choice of documents that are disclosable and those that are not. The Policy does not list or explain what kinds of documents are not disclosable and why.

2. *Accountability*

- The document is not very clear on which department or part of the EIB "owns" the Policy and who is accountable for oversight and implementation, including administering requests for disclosure and objections to decisions not to disclose.

3. *Global Loans*

- The Disclosure Policy should directly address how, why and what information is made available on global loans given that they are a large portion of the bank's business.

4. *Relationship with EIB Strategy on Value Added*

- The new EIB Strategy rests on two pillars – transparency and value added. One of the aspects of value added that could be expected from a publicly-funded financial institution is innovate financial structures and innovative financial approaches to the policy objectives of the EU. It is difficult to find information on EIB's website about its financial engineering innovations. It might be quite useful to make "lessons learned" on infrastructure financing, PPPs, regional development or i2i for example, a prominent item on the website.

5. *Information on Environmental & Social Information about Projects*

- Based on a brief personal survey of a few EIB projects on the EIB website, it appears that there are no specific requirements about the type and depth of environmental and social information that is disclosed on projects.¹ This is often the type of project information the public, NGOs and local communities find most interesting. Some projects on the EIB website currently list only "process" information – i.e. noting whether an EIA has been done -- while other projects provide at least a hint of the substantive issues of concern in the project – i.e. air pollution issues. The Draft Disclosure Policy does not clearly articulate whether there will be specific requirements on environmental and social disclosure developed as part of the implementation of the Disclosure Policy. In line with developing best practice on MDB disclosure, EIB might consider developing more specific requirements about both the procedural and substantive environmental and social information that should be made available on projects in the EIB pipeline, together with specific commitments on the timing of when such project disclosure is made.

6. *Connection between the Disclosure Policy and the proposed Inspection Mechanism*

- I recognize that the details of the Inspection Mechanism are not yet available, but it might provide some comfort to the EIB public to know when those details will be available, whether the public will be given an opportunity to comment on the proposed Mechanism, what process the EIB will use in choosing people to provide oversight, etc.
- As EIB is no doubt aware, there are several models of Inspection Mechanisms in use at different MDBs. There may be some valuable lessons to be learned from the experience of other MDBs that it would be

¹ Does the EIB have the ability to survey not only hits on the website but what kind of information is viewed? This might provide an interesting statistic.

worth taking the time to obtain and understand, as amending the scope and tenor of inspection-like mechanisms can be a contentious and difficult process once in place with a committed public constituency. Given the EU's familiarity with an Ombudsman procedure, presumably the EIB is looking at this type of model as well as a World Bank type Inspection Panel. There are many issues to resolve before putting such a procedure in place that EIB no doubt will not underestimate.

7. Environmental and Social Information and the Link to the Inspection Mechanism

- Also in line with developing best practice, EIB might consider whether it needs its own public consultation requirements on EIB-financed projects, or whether consultation requirements on EIB projects are driven solely by the public consultation requirements of the EIA Directive. The latter choice means of course that for projects where an EIA is not required, there is probably no public consultation on the project. Based on experience at other MDBs, complaints about projects are often around environmental and social issues in connection with the project. This same pattern of complaints would presumably apply for EIB projects as well. If that is the case, EIB might consider whether the lack of a public consultation process in a project might foreclose opportunities to address controversial environmental and social issues early in the project cycle, and thereby result in more environmental and social complaints to the Inspection Mechanism later in the project cycle when the problems might be more entrenched and difficult to deal with. It might be well worth parsing through the link between the introduction of the Inspection Mechanism and disclosure and consultation options available on projects. More information and more consultation up front may ultimately prove to be time-saving, even though that might seem counterintuitive at first glance.

8. Documents that Are Presumed Disclosable

- It is unclear from the current draft what the relationship is between the categories of documents presumed disclosable. For example, if there is an EIA requirement for the project, does that trump the request from a private sector participant to oppose disclosure - i.e. in a project where an EIA is required information will be disclosed even if a project promoter objects? Is it any information on the project or just environmental information that must be disclosed if an EIA is done? The same question applies for projects where there is a call for tender – does that automatically mean that the project information is disclosed, even if the private sector promoter objects?

9. Confidentiality

- The draft Disclosure Policy justifiably makes reference to the need to preserve client confidentiality in banking operations. However,

confidentiality is not a monolithic, unchanging concept. There is both a contextual and temporal aspect to confidentiality – what may be confidential in one context won't be in another and what may be confidential before a loan agreement is signed won't necessarily be confidential afterwards. The draft Disclosure Policy does not mention any process to review, on a regular basis, the decision to decline disclosure of requested documents. This could be an important aspect of building trust on the institution's commitment to transparency. In addition, it might be very useful to provide some further publicly disclosed guidelines on what "commercial confidentiality" actually means – how it is defined, how it is applied. The document very helpfully lists the type of documents that are typically considered confidential – are these the only documents that would be considered confidential or would that be decided on a case-by-case basis? That should be clarified and if there will be case-by-case decisions, a short piece about why and how decisions are made to decline disclosure because of commercial confidentiality would be a very useful, groundbreaking step. This would again go a long way towards building trust on this complicating concept and dispelling the notion that documents are wholesale and conveniently put off limits without a clear articulation of what really is undisclosable in a document or transaction.

10. Vision of Disclosure

- There are parts of the current that document have a rather negative or conservative tone. Here is an example: "on global loans, no objection to intermediary banks making available information covering their relationship with EIB." "No objection" is a weak statement. If the EIB is making a commitment to the principle of transparency, shouldn't the EIB be encouraging its global loan intermediary banks to make information available to the public on how the banks are using EIB (and ultimately public sector) funds, within the limit of preserving necessary client confidentiality? A position that all information on global loans is commercially confidential would clearly not meet the test of reasonableness. As a recent example, there was a demand from an NGO asking that the EIB substantiate the statement made in its environmental report about renewable energy financing. Putting aside the politics of the request, that is not an unreasonable request from a member of the EIB public (i.e. asking the institution to substantiate its public statements with collated information) and one that the institution could reasonably be expected to respond to in a transparent and straightforward manner.

11. Information on Non-Financial Risks at the EIB

- While the EIB makes an impressive amount of financial information available, it is not clear what kinds of information is available on non-financial risk and in particular whether this information is presented in a manner that is collated and understandable to the general (i.e. non-specialist) public. Here again, reference could be made to developing

best practice and recent regulatory developments in some of the Member States, like the OFR requirements on non-financial disclosure in the UK.

12. *Rules on Public Access to Documents*

- This document appears to be written almost along the style of an EU directive, rather than as understandable rules for the public. The style of the document and the wording used are not very user-friendly. In addition, the document makes the cardinal sin of referring to other documents (that are not even hyperlinked) for important issues that should be covered in the document itself (see Art. 8 on recourse). To achieve its objectives, the document could usefully be redrafted from the public's point of view, presenting the rules in an easy-to-read and understandable manner and in a self-contained document.

13. *Benchmarking*

- It would be interesting to disclose EIB's benchmarking exercise on disclosure among MDBs that supports the conclusions drawn about the comparability of its policy with other MDBs. This is an example of the kind of disclosure that would provide tangible evidence to a potentially sceptical audience that the institution is very serious about its transparency strategy.

14. *Action Plan on Transparency*

- Similarly, disclosing progress on the steps the institution has taken to implement its Action Plan on Transparency would be a good demonstration of the EIB's commitment to transparency. This is also an example of disclosure that may not fall within any of the pre-defined categories in the Disclosure Policy but nonetheless would be both useful and demonstrative to the EIB public. Does the Disclosure Policy provide sufficient guidance to the institution on when these kinds of "additional" documents that should be disclosed?

Consultant