

Transparency Policy

Complaint SG/G/2016/01

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

26 March 2019



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External Distribution

Complainants:

ClientEarth, Counterbalance and CEE Bankwatch Network

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The EIB Complaints Mechanism

The EIB Complaints Mechanism is intended to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases where the public feels that the EIB Group did something wrong, i.e. if members of the public consider that the EIB committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) and – one external – the European Ombudsman (EO).

Complainants that are not satisfied with the EIB-CM's reply may submit a confirmatory complaint within 15 days of the receipt of that reply. In addition, complainants that are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB Group with the European Ombudsman.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is intended not only to address non-compliance by the EIB with its policies and procedures but to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website:
<http://www.eib.org/about/accountability/complaints/index.htm>

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CONCLUSIONS REPORT

Complainants: [redacted] ClientEarth, Counterbalance and CEE Bankwatch Network
Date received: 16 February 2016
Confidential: No
Subject of complaint: Alleged non-compliance of the EIB's practice with the applicable regulatory framework as regards active dissemination of project-related information

1. THE COMPLAINT

1.1 On 16 February 2016, [redacted] ClientEarth, Counterbalance and CEE Bankwatch Network (hereinafter "the Complainants"), lodged a complaint with the Complaints Mechanism of the European Investment Bank (hereinafter "the EIB-CM") by e-mail. The complaint concerned (i) alleged non-compliance of the 2015 EIB Group Transparency Policy (hereinafter "the Transparency Policy" or "the TP") with EU and international laws on access to information, and (ii) alleged non-compliance of the EIB's practice with the applicable regulatory framework as regards the active dissemination of project-related information.

1.2 With regard to the first allegation, the Complainants challenged the compliance of the TP with the Convention on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention), Regulation 1367/2006/EC on the application of the provisions of the Aarhus Convention to Community institutions and bodies (the Aarhus Regulation) and Regulation 1049/2001/EC regarding public access to documents. The Complainants alleged that the text of Article 4.6 of the TP did not comply with the case-law related to Regulation 1049/2001. In addition, the Complainants alleged that a number of provisions of the TP were not in conformity with the relevant legislative framework. According to the Complainants, the TP did not fulfil the obligations to publish the location of documents held by the Bank (Article 12(4) of Regulation 1049/2001) and to provide sufficient information to the public about the type and scope of environmental information held (Article 5(2)(a) of the Aarhus Convention).

1.3 With regard to the second allegation, the Complainants argued that the EIB's practice failed to fulfil the specific requirement of Article 4 of the Aarhus Regulation that environmental information relevant to the functions of EU institutions and bodies is organised with a view to its active and systematic dissemination to the public. The Complainants specifically pointed out that they had been unable to locate any Environmental and Social Completion Sheet on the register. In addition, the Complainants provided the following examples as evidence of the documents considered to be missing from the register:

" · MHP Agri Food Project: only the Environmental and Social Impact Assessment (in the Ukrainian language, provided by the borrower and produced for the purpose of obtaining development consent at national level) can be found on the register. The ESDS can also be found on the project page. However, we know that the following documents exist but have not been published anywhere: EIB translations of parts of the EIA [sic], the Results and Measurement Framework and the Environmental Appraisal.

· ETAP South Tunisian Gas Project: The EIAs for different components of the project and the ESDS can be found on the register. We know that the following documents exist but have not been published: the management proposal for the Board, including the part dealing with environmental issues, the Environmental Summary Sheet and the Results and Measurement Framework.

· Revithoussa LNG terminal extension: The ESDS and the EIAS is [sic] available on the register. We know that an EIB Environmental and Social Assessment exists but has not been published.

· AUTOSTRADA BREBEMI PPP: the ESDS is available on the register and the Non-Technical Summary of the EIA is available on the project page. We know that the EIB Environmental and Social Assessment exists but has not been published."

1.4 From the presented examples, the Complainants concluded that the register did not hold any of the documents drawn up by the Bank for the purpose of decision-making, monitoring and project evaluation. Whereas the documents

EXECUTIVE SUMMARY

On 16 February 2016, ClientEarth, Counterbalance and CEE Bankwatch Network (hereinafter “the Complainants”), lodged a complaint with the Complaints Mechanism of the European Investment Bank (hereinafter “the EIB-CM”) by e-mail. The complaint concerned (i) alleged non-compliance of the 2015 EIB Group Transparency Policy with EU and international laws on access to information, and (ii) alleged non-compliance of the EIB’s practice with the applicable regulatory framework as regards active dissemination of project-related information.

The first part of the complaint was declared inadmissible and the Complainants were informed accordingly in a letter dated 10 June 2016. The present conclusions report therefore addresses only the alleged non-compliance of the EIB’s current practice with the applicable regulatory framework and in particular with the Bank’s duty to organise and progressively publish environmental information relevant to its functions.

As a result of its inquiry, the EIB-CM found that while on the date of the filing of the present complaint certain documents, such as Environmental and Social Completion Sheets (ESCSs), were not published on the public register, the Bank has since started publishing them on the register and has made significant headway in this respect in line with its obligations to organise the environmental information relevant to its functions and to make it progressively available to the public.

Concerning the Complainants’ allegation that a list of specific types of documents should be included on the public register in order for the Bank to fulfil its obligations under Article 4 of the Aarhus Regulation, the EIB-CM concludes that the Bank’s current practice is in line with the duties of the Bank. In reaching this conclusion, the EIB-CM took into account that the relevant environmental information is streamlined by the Bank in several key documents, most notably Environmental and Social Data Sheets (ESDSs) and ESCSs. The EIB-CM also took note of the Bank’s Transparency Policy which requires the regular update and development of the list of documents published and that in practice there is a growing number of types of project-related documents which the Bank publishes on the register and website on a regular basis.

placed on the register were redacted and summarised versions of the documents held by the Bank, the Complainants took the view that this practice did not allow the public to know the information that was in the Bank's possession and prevented public scrutiny on the exceptions to the right of access provided under Regulation 1049/2001 and the Aarhus Regulation. The Complainants considered that, as a result, the EIB had not entirely fulfilled its commitment to actively disseminate the content of documents related to the Project which was made to the European Ombudsman as part of her own-initiative inquiry OI/3/2013¹.

1.5 Therefore, the Complainants claimed that the Bank should publish a number of documents referred to in the Environmental and Social Handbook, which were not available on the public register². Finally, the Complainants elaborated on Article 19 of the EIB Statute and claimed that the opinions provided under that article should also had been available to the public on the register.

1.6 In a letter of 10 June 2016, the EIB-CM informed the Complainants that the EIB-CM was not in the condition to deal with the allegations concerning the legality of the EIB Transparency Policy, approved by the EIB Board of Directors. Therefore, the present Conclusions Report addresses only the allegations concerning the practice of the EIB and which are listed in §§ 1.3 – 1.5 above.

2. **BACKGROUND INFORMATION**

2.1. On 6 September 2016 the Complainants challenged before the European Ombudsman the EIB-CM's decision to declare their complaint partially admissible. They further complained that the EIB's Transparency Policy was not compatible with the Aarhus Convention, the Aarhus Regulation and Regulation 1049/2001. On 27 May 2017 the EIB replied to the Complainants on the allegations concerning the compatibility of the EIB's Transparency Policy with the Aarhus Convention, the Aarhus Regulation and Regulation 1049/2001. In addition, the EIB made submissions to the European Ombudsman concerning the decision on admissibility in the Complainants' case.

2.2 On 23 May 2018 the Ombudsman issued her decision.³ The decision found that although there is room for improvement of certain provisions, the EIB's Transparency Policy is not worded in such a way as to amount to maladministration. The Ombudsman encouraged the EIB to improve the formulation of certain articles in its Transparency Policy by making a number of suggestions in this regard.

¹ Case OI/3/2013 concerned the active dissemination of environmental information on a project.

² "Project Summaries; Environmental Impact assessments (EIA) of Projects, including Non-Technical Summaries (NTS) or Environmental Impact Statements (EIS); EIB's environmental and social assessments of projects, including Environmental and Social Data Sheets, Overall Environmental and Social Assessment Forms D1/2/3, Environmental and Social Impact Rating and GHG Footprint Assessment Form; Fiches submitted by the intermediary of Mid-Cap Loans, which includes environmental and social information; The results of the environmental and social screening carried out for all schemes under Mid-Cap Loans, known at the time of pre-appraisal. The results of these assessments of the intermediary of Mid-Cap loans focus on the capacity and capability of the intermediary to manage the environmental and social aspects, including impacts and risks, arising from its operations; Environmental and social reviews of particular Global Loan operations, including the assessment of the environmental social risk management capacity of the intermediary; Environmental and social due diligence of particular fund operations, including the assessment of the environmental and social risk management capacity of the promoter and/or fund manager; Stakeholder Engagement Plans; Declaration Forms for Sites of Natural Conservation (forms A and B); The proposals of the Management Committee to the Board of Directors; The part of project contracts that refer to environmental and social conditions applied to the projects; Reports from monitoring missions; Assessments, reviews and reports commissioned by the EIB with third parties regarding the environmental aspects of the Bank's projects; Project completion reports and project evaluation reports; Justification for any deviation from EU implementation standards for projects conducted outside of the EU (a document produced pursuant to p.40 of the Bank's statement on Environmental and Social Principles and Standards (ESPS)); Methodologies used for evaluation, such as the Result Measurement Framework and Three-pillars assessment (3PA); The contact details of the relevant persons at the EIB."

³ Available at: <https://www.ombudsman.europa.eu/en/decision/en/95520>

3. REGULATORY FRAMEWORK

3.1 The EIB Complaints Mechanism's mandate

3.1.1 The EIB-CM policy and operational procedures apply to complaints of maladministration lodged against the EIB Group (Article 4.1 of Title II "*Principles*" of the 2010 EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure - CMPTR). Complaints may concern any alleged maladministration of the EIB Group in its actions and/or omissions (Article 4.1 of Title IV "*Rules of Procedure*" of the EIB's CMPTR).

3.1.2 In the context of the handling of admissible complaints and pursuant to Article 4.2 of Title III "*Terms of Reference*" of the CMPTR, the EIB-CM gathers and reviews existing information on the subject under complaint, makes appropriate enquiries with a view to assessing whether the EIB Group's policies and procedures have been followed, reports on findings, makes recommendations regarding corrective actions and/or possible improvements of existing procedures and fosters adherence to the EIB Group's policies, in particular those regarding good administration, disclosure and transparency. The EIB-CM is independent from operational activities and thus ensures that each complaint is dealt with according to the highest standards of objectiveness while safeguarding the interest of all internal and external stakeholders of the EIB Group according to Article 2.1 of Title III "*Terms of Reference*" of the CMPTR.

3.2 The Aarhus Regulation⁴

3.2.1 The Aarhus Regulation implements the Aarhus Convention⁵ for EU institutions and bodies. Article 1 of the Aarhus Regulation guarantees "*the right of public access to environmental information received or produced by Community institutions or bodies and held by them*" as well as obliges the Community institutions and bodies to ensure that "*environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination, in particular by means of computer telecommunications and/or electronic technology...*".

3.2.2 Environmental information is defined in Article 2 (1) (d) of the Regulation as "*any information in written, visual, aural, electronic or any other material form on*

1. *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
2. *factors such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in point (i);*
3. *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to in points (i) and (ii) as well as measures or activities designed to protect those elements;*
4. *reports on the implementation of environmental legislation;*
5. *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in point (iii);*
6. *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in point (i) or, through those elements, by any of the matters referred to in points (ii) and (iii);"*

3.2.3 Regarding the collection and dissemination of environmental information, Article 4 (1) states that "*Community institutions and bodies shall organise the environmental information which is relevant to their functions and which is held by them, with a view to its active and systematic dissemination to the public. [...] They shall make this environmental*

⁴ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 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 (OJ 2006 L 264, p. 13).

⁵ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ L 124, 17.5.2005, pp. 1–3).

information progressively available in electronic databases that are easily accessible to the public through public telecommunication networks. To that end, they shall place the environmental information that they hold on databases and equip these with search aids and other forms of software designed to assist the public in locating the information they require”.

3.2.4 Under Article 4(2) of the Regulation it is required that the environmental information to be made available and disseminated shall be updated as appropriate. Considering the activities of the EIB, the information that shall be made actively available, if held by the EIB, as required by Article 4 (2) includes the following:

“(a) texts [...] of policies [...] relating to the environment;

(b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by Community institutions or bodies;

[...]

(e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;

(f) authorisations with a significant impact on the environment, and environmental agreements, or a reference to the place where such information can be requested or accessed;

(g) environmental impact studies and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed.”

3.2.5 Under Article 4(3) in appropriate cases, Community institutions and bodies may satisfy these requirements by creating links to Internet sites where the information can be found.

3.2.6 With regard to the quality of the environmental information Article 5 of the Regulation requires that “Community institutions and bodies shall, insofar as within their power, ensure that any information that is compiled by them, or on their behalf, is up-to-date, accurate and comparable.”

3.3 The EIB Group Transparency Policy

3.3.1 The current EIB Group Transparency Policy was adopted by the EIB’s Board of Directors on 6 March 2015 in accordance with Article 18 of the Bank’s Rules of Procedure. The Policy sets out the EIB Group’s approach to transparency and stakeholder engagement. It defines the procedures concerning information requests from the public, as well as the information that the EIB makes routinely available to the public.

3.3.2 The EIB Group Transparency Policy is *“guided by openness and the highest possible level of transparency with the underlying presumption that information concerning the Group’s operational and institutional activities will be made available to third parties (the public) unless it is subject to a defined exception (“presumption of disclosure”) [...], based on the principle of non-discrimination and equal treatment and in line with EU legislation [...]”* (§ 2.1).

3.3.3 The EIB is fully committed to regularly publish accurate information regarding its operations in a timely fashion. The EIB routinely publishes a broad set of documents, including project-related information. The Transparency Policy further states that *“[a] non-exhaustive list with links to key EIB documents and information is published on the EIB website. The list is regularly up-dated and developed”* (§ 4.1).

3.3.4 Concerning the principles for publication of information, § 4.4 of the Transparency Policy states that *“Within the limits imposed by applicable laws and regulations, the final determination as to what information may be released to the public shall rest with the Bank which shall also decide which documents to publish, in electronic and/or in paper form, and which documents are available on request only.”*

3.3.5 The rules concerning project information documents and the manner in which they are posted, published and disclosed to the public are detailed in §§ 4.5 – 4.13. In relation to the publication of specific project information on the register, §4.12 provides that *“In compliance with the Aarhus Regulation, environmental and social information held by the Bank and related to projects is also made available through the EIB’s Public Register of documents that the Bank has set-up on its website. The EIB is developing this register to ensure that environmental information is progressively made available and disseminated to the public.”*

3.3.6 With regard to project summaries, §§ 4.5- 4.9 lay down the rules concerning publication.⁶

3.3.7 A limited number of projects are not published before loan signature to protect justified interests based on the exceptions to disclosure laid down in the TP (§4.6). This in particular includes the case of private sector projects for which the promoter has presented legitimate confidentiality reasons.⁷

3.4 Other relevant EIB documents in the field of transparency

3.4.1 The 2015 "Guide to accessing environmental and social information/documents held by the EIB" is an information guide that allows the public to easily identify and access environmental and social information and documents that are held by the EIB and are available on the EIB website or can be obtained on request. Paragraph 4 of the Guide provides that *"in compliance with the Aarhus Regulation, environmental and social information/documents held by the Bank and related to projects are made available through the EIB's Public Register, that the Bank has set-up on its website on 2nd January 2014."* The Guide states that the Public Register includes certain types of project-related information/documents in the EIB's possession. The Guide lists the types of documents to be published. The Guide further states that the Public Register at the time of the publication of the guide includes: EIB Environmental and Social Data Sheets, EIB Environmental and Social Completion Sheets, Non-Technical Summaries of Environmental Impact Assessments, the equivalent of Non-Technical Summaries (for projects outside the EU) and Environmental and Social Impact Study/Statement (for projects outside the EU). Finally, the Guide clarifies that the EIB is developing the Public Register to ensure that environmental and social information held by the Bank is progressively made available and disseminated to the public. The 2015 guide is a living document subject to updates.

3.4.2 The public register contains a FAQ document providing more details and updated information about the register.⁸

3.4.3 Each year the EIB publishes a report on the implementation of the EIB Group Transparency Policy. The latest such Report was published for the implementation of the TP during 2017.⁹ It provides an overview and assessment of the key elements of the policy in 2017, including active publication of information on the EIB website. According to the report the EIB is progressively developing the Public Register and the Public Register currently includes key project-related environmental documents held by the Bank, namely:

1. EIB Environmental and Social Data Sheets (ESDS)
2. EIB Environmental and Social Completion Sheets (ESCS)
3. Not-technical Summaries (NTS) of Environmental Impact Assessment (EIA)
4. Environmental and Social Impact Assessment (ESIA) documents carried out by project promoters and published on the register when received by the Bank
5. Environmental and Social Management Systems (ESMS).

3.4.4 In addition, the FAQ document makes reference to a number of other project-related documents published on the public register:

⁶ "A project summary is usually posted on the Project List on the Bank's website when the Bank formally requests the opinions of the Member States or the project host country and the European Commission, as required under Article 19 of the EIB Statute. This is considered to be the most suitable point for the first public statement when the Bank reached a sufficiently advanced stage in discussions with a project promoter to commence the project's appraisal prior to a loan proposal going to the Board of Directors.

The Bank shall publish project summaries of all investment projects at least 3 weeks before the project is considered for approval by the EIB's Board of Directors. However, a limited number of projects are not published before Board approval and, in some cases, not before loan signature to protect justified interests based on the exceptions to disclosure laid down in this Policy.

Project summaries generally include the name of the project, the project promoter or financial intermediary (for intermediated loans), the location of the project, the sector it represents, a project description, its objective(s), its environmental and, if relevant, social aspects, procurement data, proposed EIB finance, the total project cost, and the status of the project, noting whether it is "under appraisal", "approved" or "signed". When applicable, links are provided to environmental information (Environmental and Social Impact Assessments and/or Non-Technical Summaries), as early as possible in the project cycle.

Intermediated loans are published on the Project list on the Bank's website. In addition, and to the extent possible, the Bank releases, on request, aggregate data on intermediated loan financing, including country and sector breakdowns.

If applicable, the project summary includes a link to the EIB Public Register (see below) which hosts the Non-Technical Summary (NTS) of an EIA and, outside the EU, the equivalent of the NTS along with the Environmental Impact Study/statement (EIS), and other relevant documents pertaining to a project's environmental and social performance. EIB Staff endeavour to meet any specific requests for information on particular EIA/EIS-related issues and documents. The EIB requires promoters to make EIA-related documents available to the public in an appropriate location and form, and also encourages them to make public any additional environmental and social information related to the project."

⁷ See EIB website explanatory note at <http://www.eib.org/projects/pipelines/notice/index.htm>

⁸ <http://www.eib.org/en/infocentre/registers/faq/index.htm>

⁹ Available at: <http://www.eib.org/en/infocentre/publications/all/report-on-the-implementation-on-the-eibs-transparency-policy-in-2017.htm>

- The full Environmental Impact Assessment Studies/Statements/Reports for all projects, where applicable.
- Resettlement Action Plans (RAP), Stakeholder Engagement Plans (SEP), Livelihood and Restoration/Compensation Plans, Resettlement Policy Frameworks, and Indigenous Peoples Development Plans.
- Key environmental policy documents, reports and guidelines, such as the EIB Environmental and Social Handbook, and Carbon Footprint Reports.

3.4.5 According to the Report, 257 ESDS, 126 ESCS, 55 NTS, 332 ESIA and five ESMS were published on the Public Register in 2017.

3.5 EIB Environmental and Social Handbook

3.5.1 Under the EIB Environmental and Social Handbook (2014 edition) for all projects on the Project List, both in the EU and outside the EU, where an ESIA is required (according to applicable EU and/or national legislation or as a prerequisite for the EIB's financing or at the initiative of the promoter), the EIB makes the NTS (or equivalent) of the study of the ESIA available to the public, where possible through electronic links in the EIB's Project List, to the promoter's website (§ 333, Section D. 1. 2, Volume II EIB Environmental and Social Practices and Procedures).

3.5.2 For projects on the Project List, outside the EU, where an ESIA is required, the environmental and social impact study (ESIS) of the ESIA will also be made available in the same way (§ 334).

3.5.3 For mid-cap and global loans and for funds the EIB normally delegates the verification of any NTS and ESIS and other environmental and social documents to the intermediary or fund managers and does not publish such documents on its own website but requires the intermediary or fund manager to do so (§ 340).

3.5.4 The environmental and social due diligence is recorded in the Environmental and Social Data Sheet (ESDS) of the PJ Appraisal Report. Environmental and social impacts and risks should be based on the findings and judgements in Forms D1/2/3 (§ 346)¹⁰.

3.5.5 According to § 358 "[e]ven though the ESDS is the only document that pulls together and summarises EIB's environmental and social due diligence, it is a document that is written for the general public and therefore should present overview and analysis of the environmental, social and climate risks and impacts associated with the project, its associated/ancillary facilities and its area of influence. It describes and explains the key measures identified to manage those risks and impacts and concludes on the acceptability of the project in E&S terms taking into account the residual impacts and the positive effects of the projects".

3.5.6 Annex 1 to Volume II of the Handbook contains a model of an Environmental and Social Data Sheet, including the information sections that the ESDS normally contains, such as whether an EIA is required, whether the project is included in the carbon footprint exercise, the key environmental and social contractual conditions, environmental and social assessment, information about public consultation and stakeholder engagement, and other environmental and social aspects. The ESDS is prepared as an attachment to the Board report and will be made available to the public.

3.5.7 Under § 43 of Volume II of the Handbook "[t]he final overall environmental and social impact rating will be assigned to the project following the Project Team's appraisal when all outcome requirements of the project have been analysed. This rating takes into account the residual environmental and social impacts after mitigation, remedy and compensation..." Furthermore, section B.2.9 of Volume II lays down the rules concerning Environmental and Social Impact Rating, including that forms D2/D3/D4 should be taken into account in judging the overall acceptability of the project.

3.5.8 Annex 14 to Volume II of the Handbook contains a model of a GHG Footprint Assessment form.

¹⁰ It is noted that forms D2 and D3 are no longer produced by the Bank as this information is now captured in the ESDS.

3.6 EIB Statute

3.6.1 Article 19 of the EIB Statute provides that “[a]ny undertaking or public or private entity may apply directly to the Bank for financing. Applications to the Bank may also be made either through the Commission or through the Member State on whose territory the investment will be carried out. Applications made through the Commission shall be submitted for an opinion to the Member State in whose territory the investment will be carried out. Applications made through a Member State shall be submitted to the Commission for an opinion. Applications made direct by an undertaking shall be submitted to the Member State concerned and to the Commission. The Member State concerned and the Commission shall deliver their opinions within two months. If no reply is received within this period, the Bank may assume that there is no objection to the investment in question.”

4. THE EIB-CM INQUIRY

4.1 The present conclusions report addresses only the allegations listed in §§ 1.3 – 1.5 above, in so far as the Complainants allege non-compliance of the EIB’s current practice with the applicable regulatory framework. In particular, the report examines the instances provided by the Complainants which in their view exemplify that the register does not hold any of the documents drawn up by the Bank for the purpose of decision-making, monitoring and project evaluation. The examples are also examined from the standpoint of the Complainants’ further allegation that the EIB’s practice fails to fulfil specific regulatory requirements on active dissemination of environmental information.

4.2 In order to address the Complainants’ allegations, the EIB-CM reviewed the applicable regulatory framework, and other relevant documents. The EIB-CM liaised with the Bank’s services. The EIB-CM also checked the Complainants’ allegations with the content of the Public Register in order to clarify the practice of the Bank with respect to active dissemination of documents.

5. FINDINGS

5.1 Alleged lack of publication in the public register of any EIB Environmental and Social Completion Sheets (ESCS)

5.1.1 According to the Complainants, at the time that the complaint was lodged (16 February 2016), no ESCSs were available on the Public Register. Under the 2015 “Guide to accessing environmental and social information/documents held by the EIB” the Public Register includes Environmental and Social Completion Sheets (ESCS) as project-related documents which summarise the Bank’s assessment of environmental and social issues at project completion stage and which are published on the register when available after the completion of the EIB investment (see §3.4.1 above).

5.1.2 The EIB-CM checked the contents of the public register and noted that as of March 2019 there were a total of 390 ESCSs published on the register, the earliest of which was published in March 2016. The EIB-CM observes that the Transparency policy was adopted in March 2015 (see § 3.3.1 above) and was subsequently in the same year followed by the publication of a relevant Guide and Reports on implementation (see §§ 3.4.1 and 3.4.2 above). While from the time of the adoption of the Transparency policy until the lodging of the present complaint, namely for a period of about eleven months, no ESCSs were published, between March 2016 until the end of 2016 a total of 38 ESCSs were placed on the register. This number has subsequently grown and in 2017 a total of 126 ESCSs were published in the Public Register. Considering that, as referred to in § 3.2.1 above, the Bank is under the obligation to “ensure that environmental information is *progressively* made available and disseminated to the public” (emphasis added), the EIB-CM finds that the number of publications referred to above demonstrates that the practice of the EIB is in line with the applicable EIB standards.

5.2 Alleged lack of publication of documents related to four projects (the MHP Agri Food Project, ETAP South Tunisian Gas Project, Revithoussa LNG terminal extension and AUTOSTRADA BREBEMI PPP) in the public register

5.2.1 The Complainants allege that in respect of the *MHP Agri Food Project* the register does not contain EIB translations of parts of the EIB, the Results and Measurement Framework and the Environmental Appraisal (sic). The EIB-CM interprets this submission as an allegation that the Environmental Appraisal and the Results and Measurement Framework (ReM Framework) are not published on the register, whereas according to the Complainants they should be.

5.2.2 The EIB-CM checked the contents of the public register and noted that as of March 2019 in respect of the project at issue there were three documents published: the ESDS (published on 12 May 2016), the ESIA (published on 13 July 2017), and the ESCS (published on 31 January 2018). In addition, the search producing the ESDS provides a reference and a link to the project summary sheet, which in turn provides a link to the NTS of the Environmental Impact Assessment, the project data sheet and the project completion report (PCR), published on 14 June 2018.

5.2.3 In the 2013 EIB Environmental and Social Handbook, the EIA is defined as the “process of identifying, predicting, evaluation and mitigating the biophysical, social and other relevant effect of projects prior to major decisions being taken and commitments made”. A Non-Technical Summary (NTS) in turn is defined as a summary document of the Environmental (and Social) Impact Assessment or the Strategic Environmental Assessment, written in a non-technical language, so that the public can easily understand it. The EIB environmental and social due diligence is summarised in a document entitled Environmental and Social Data Sheet (ESDS).

5.2.4 The EIB-CM notes that the ESDS and the ESCS documents in respect of the project in practice contain details of concrete environmental information (the fact that the project falls under Annex II to the EIA Directive 2011/92/EU, the date of the EIS, the undertakings which will be part of the finance contract, results of the modelling of the impacts of the project, information about the public consultation and stakeholder engagement, as well as enumeration of the key environmental and social aspects that will continue to be monitored during the operation). The documents further make reference to reports from the promoter and EIB site visits, among others.

5.2.5 With respect to this type of documents that the Complainants allege to be missing from the public register the EIB-CM makes the following observations. The ESDS for the project was published on the register on 12 May 2016. A review of the document by the EIB-CM reveals that it contains an organisation of the environmental information pertinent to the project and held by the Bank. This information is further complemented by the subsequent publication of the ESCS. Based on these developments, the EIB-CM considers that the EIB fulfilled its obligation to progressively disseminate this environmental information.

5.2.6 In respect of the second document that the Complainants allege to be missing from the register – the ReM Framework, the EIB-CM observes that this is not a document that the Bank currently publishes on the register. The ReM framework¹¹ was introduced in January 2012. A ReM assessment accompanies all project proposals submitted for approval to the Board under the external mandate. During the ReM assessment the Bank produces its own analysis¹² of the social, environmental, economic and financial aspects of the project, which serves to inform the Bank’s decision whether to provide its final assistance. Another objective of the ReM is to better assess and be able to report on the Bank’s contribution to mandate objectives by focusing on concrete results.

5.2.7 The EIB-CM observes that, although some parts of the ReM assessment may contain, at the moment of project completion and after completion, environmental information falling under the obligation of active transparency, this information is captured in the ESCS, actively published by the EIB. The EIB-CM is satisfied that the current practice of disclosure is consistent with the Bank’s obligations under the relevant regulatory framework¹³.

5.2.8 The Complainants allege that in respect of the *ETAP South Tunisian Gas project* the register does not contain “the management proposal for the Board, including the part dealing with environmental issues, the Environmental Summary Sheet and the Results and Measurement Framework”.

5.2.9 The EIB-CM checked the contents of the public register and noted that as of March 2019 in respect of the project at issue there were a number of documents published, namely the ESDS which was published on 10 December 2014 and five separate ESIA studies in respect of different components of the project, which were published on 8 September 2014.

5.2.10 The EIB-CM observes that a document entitled “management proposal for the Board” is not among the types of documents published on the register. From the wording applied by the Complainants, the EIB-CM discerns that the Complainants refer to the proposal from the Management Committee to the Board of Directors, which is related to the

¹¹ <http://www.eib.org/projects/cycle/monitoring/rem.htm>

¹² More information on the ReM methodology can be found at: http://www.eib.org/attachments/rem_framework_methodology_en.pdf

¹³ Furthermore, the EIB-CM notes that the ELM Decision 466/2014/EU (granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union) does not set specific rules of active transparency applying to ReMs, which would derogate from the applicable regulatory framework identified in §§.3.2-3.3 of this report.

procedure of approving a project. In this regard, it should be noted that this procedure and any documents associated with it contain a wide range of information, related to the various aspects to be considered in respect of any given project and only parts of this information is environmental in nature, namely concerning key environmental issues and environmental impacts. The EIB-CM observes that this information is streamlined and disclosed by the Bank via the ESDS document.

5.2.11 With respect to the alleged non-publication of the Environmental Summary Sheet, the EIB-CM is satisfied that the information gathered under the EIB environmental due diligence during the project appraisal is organised in the ESDS document. For the project under consideration this document was published on the public register on 10 December 2014. A review of the document by the EIB-CM reveals that it contains a summary of the environmental and social assessment. The ESDS among others states that an EIA is required for the project, provides a summary of the key risks and impacts, states when public consultation took place, makes reference to the national legislation governing environmental assessment and provides the results of the EIB carbon footprint exercise. The EIB-CM considers that this reflects the Bank's obligation to organise the environmental information relevant to this project and to actively disseminate it to the public.

5.2.12 With regard to disclosure of the ReM framework document, the EIB-CM does not consider the Bank's practice non-compliant for the reasons given in § 5.2.7 above. This is supported by the EIB-CM's conclusion in a recent case, related to the same project and concerning active dissemination of the ReM.¹⁴

5.2.13 With regard to the *Revithoussa LNG terminal extension* project, the Complainants allege that an EIB Environmental and Social Assessment exists but has not been published on the register.

5.2.14 The EIB-CM observes that as of the date on which the complaint was lodged a number of project-related documents were posted on the public register: the NTS document entitled 'Revithoussa LNG terminal extension - Construction of 3rd Tank as part of 2nd upgrade of LNG Terminal' (3 July 2013); the ESDS (7 January 2014); the NTS document entitled 'Revithoussa LNG terminal extension – expansion of cryogenic facilities – 2nd upgrade of LNG terminal' (9 December 2014) and the NTS document entitled 'Revithoussa LNG terminal extension – upgrade of jetty facilities as part of 2nd upgrade of LNG terminal' (9 December 2014). In addition, on 13 October 2016 the ESIA document entitled 'Cumulative Impact Assessment for the 2nd upgrade of the LNG terminal in Revithoussa Island, Greece' was published on the register.

5.2.15 The EIB-CM observes that, at the time of that the complaint was lodged, the ESIA in relation to the project was not published on the register, but that the document was published later in the same year. In addition, the EIB-CM notes that a number of key documents providing environmental information relating to the project were already published, in particular the ESDS, which contains an environmental and social assessment section. The EIB-CM considers that by publishing these documents on the register, the Bank acted in conformity with its policy framework.

5.2.16 The Complainants state that, with respect to the project *Autostrada Brebemi PPP*, an Environmental and Social Assessment exists but has not been published on the register.

5.2.17 The EIB-CM checked the contents of the public register. With respect to the project in issue, it is to be noted that an Environmental and Social Data Sheet (ESDS) was published on 5 May 2015. The document provides environmental information such as the environmental impact of the project, the proximity of Natura 2000 sites and conditions prior to first disbursement. The document also has a section entitled 'Environmental and Social Assessment' which provides environmental information, related to the EIA, environmental impacts and their mitigation, nature conservation, carbon footprint, public consultation and stakeholder engagement, among others. This section of the ESDS makes references to relevant EU legislation, names of national procedures and bodies and the specific dates when key procedures took place, the disbursement conditions envisaged, as well as numbers related to carbon footprint and design recommendations.

¹⁴ Complaint SG/A/2016/01: ETAP South Tunisian Gas: <http://www.eib.org/en/about/accountability/complaints/cases/sg-a-2016-01-etap-south-tunisian-gas.htm>

5.2.18 The EIB-CM also takes into account that, after the lodging of the complaint, progressively more and varied documents have been published on the public register with respect to the project. For example, the search producing the ESDS provides reference and a link to the project summary sheet, which in turn provides a link to the NTS of the Environmental Impact Assessment and the project data sheet. In addition, on 7 October 2017 the project's ESCS was published on the public register.

5.2.19 Taking into consideration all of the above, the EIB-CM concludes that with respect to the *Autostrada Brebemi PPP* project the Bank has met its obligations to organise and progressively disseminate the environmental information held by it and relevant to its functions.

5.3 Allegation that the EIB Public Register should at the very least include a list of project documents as suggested by the Complainants

5.3.1 The Complainants allege that the Aarhus Regulation requires EU institutions to carry out “systematic dissemination” of the information they hold and that it “obliges them to publish most if not all environmental information they are willing to disclose”. The Complainants then suggest a list of types of project documents, most of which are referred to in the Bank's Environmental and Social Handbook, and which in the Complainants' view should at the very least be published on a consistent basis on the public register (for the detailed list see § 1.5 and footnote 1 above).

5.3.2 From the outset, the EIB-CM observes that some of the items listed by the Complainants do not relate to environmental information at all (e.g. the contact details of the relevant persons at the EIB). The EIB-CM further observes that at present not all types of documents enumerated by the Complainants are published on the public register. From the EIB-CM's perspective this in itself is not indicative of an issue concerning non-compliance with the EIB's applicable regulatory framework. The EIB-CM considers that with respect to environmental project information it is not the type of a document or the number of published documents per project that attest to the Bank having met its obligations under the regulatory framework. In this regard, the EIB-CM reiterates that Article 4 (1) of the Aarhus Regulation provides for an obligation on Community institutions and bodies to “organise the environmental information which is relevant to their functions and which is held by them, with a view to its active and systematic dissemination to the public [...]”. They shall make this environmental information *progressively* available [...]” (emphasis added). This obligation is combined with the requirement of Article 1 of the Aarhus Regulation that requires Community institutions and bodies to ensure that “environmental information is *progressively* made available and disseminated to the public ...” (emphasis added). In addition, the EIB-CM points out that this obligation applies not to environmental information in general but to the environmental information specified in Article 4(2) of the Aarhus Regulation.

5.3.3 The EIB-CM observes that, at the time that the present complaint was lodged, some of the documents on the list were not published on the register but that subsequently some documents from the list have started being published. Those according to the relevant EIB documents in the field of transparency referred to in § 3.4 in particular include: Project Summaries, NTS of EIA, ESCS and ESIA.

5.3.4 In addition, the EIB-CM observes that as of June 2017 the Bank has started publishing on the register another type of document from the suggested list – Stakeholder Engagement Plans. As of July 2018, Project Completion Reports (PCRs) for projects financed under the External Lending Mandate 2014-2020 have started to be published on the Bank's website. The EIB-CM's inquiry shows that some of the information on the suggested list (for example “the part of project contracts that refer to environmental and social conditions applied to the projects”) is already present on the register via the ESDS (see §§ 3.5.6, 5.2.4 and 5.2.17 above). Furthermore, the EIB publishes on its website EIB template contractual clauses on environmental matters¹⁵, complementing the environmental and social conditions applying to individual projects and presented in the ESDSs.

5.3.5 With respect to other types of documents, namely “environmental and social assessment of projects, including Environmental and Social Data Sheets; Overall Environmental and Social Assessment Forms D1/2/3, Environmental and Social Impact Rating and GHG Footprint Assessment Form”, the EIB-CM points out that ESDS are made available to the public via the online register and that this type of documents record the environmental and social due diligence of the EIB, including environmental and social impacts based on the findings and judgments in Forms D1/2/3 (see §§ 3.5.4 – 3.5.7). The EIB-CM further notes that, where relevant, the ESDSs contain information about other environmental and social aspects, including the carbon footprint exercise in relation to projects (see §§ 3.5.6 and 5.2.11 above).

¹⁵ <http://www.eib.org/en/about/documents/eib-standard-contractual-clauses-on-environmental-information.htm>

5.3.6 The Complainants further contend that a number of other documents related to Mid-Cap Loans, Global Loans and Funds contain environmental information which should be actively disseminated by the Bank. The EIB-CM observes that the allegation in question concerns intermediary loans that are subject to the same transparency requirements as other types of loans. However, the environmental information held by the Bank in relation to such loans is different. Given that the EIB has no contractual relationship with the final beneficiaries, the publication of environmental information falls under the responsibility of the financial intermediaries and/or competent authorities (see § 3.6.3 above).

5.3.7 The Complainants mention several other types of documents and information that in their view should also be made actively available on the register: declaration Forms for Sites of Natural Conservation (forms A and B), fiches submitted by the intermediary of mid-cap loans, environmental management capacity of promoters and/or fund managers, environmental and risk management capacity of the intermediary for global loan operations, environmental information contained in reports from Bank monitoring missions, assessments, reviews and reports commissioned by the EIB with third parties regarding the environmental aspects of the Bank's projects, environmental information contained in project evaluation reports, documents received by the Bank from the promoter under para. 40 of the EIB Statement of Environmental and Social Principles and Standards.

5.3.8 With regard to these types of documents, from the information reviewed as part of this inquiry, it results that, when they contain information subject to active disclosure under Article 4 of the Aarhus Regulation, this information is already disseminated through the publication of the ESDS and ESCS on the register.

5.3.9 Through its inquiry the EIB-CM found that for intermediated financing, the relevant environmental information is disseminated through the publication of ESDS¹⁶ in cases where the Handbook requires the involvement of the Bank's PJ Directorate and environmental due diligence takes place (see Handbook – Volume II, C1- C4). For other intermediated financing, the Bank's PJ Directorate is involved only at the allocation stage¹⁷ or no environmental due diligence is undertaken at all by the Bank. In general, in such cases the Bank does not receive environmental information that is subject to active dissemination under Article 4 of the Aarhus Regulation.

5.3.10 The Complainants also submit that "under Article 19 of the Bank's statute, the Bank must provide an opinion on all financing applications to the Commission and to the Member State on whose territory the investment would be carried out." According to the Complainants "[w]here the financing application is made directly to the Commission or to the Member State concerned, it is the Commission or the Member State that is responsible for providing an opinion. These opinions should also be available to the public on the register."

5.3.11 The EIB-CM notes that the opinions as required by the procedure under Article 19 of the EIB Statute are produced by the Member States and/or the European Commission (see § 3.5.1 above) and that the Bank itself is not a body providing an opinion under the procedure in question. In addition, a review of some of the above-mentioned opinions shows that they do not contain environmental information as per Article 4(2) of the Aarhus Regulation. Under these circumstances, the EIB-CM considers that the non-publication on its public register of the opinions produced by the European Commission and/or the Member States does not run counter to the Bank's obligation for active dissemination of environmental information.

5.3.12 Taking all of the above into account, the EIB-CM considers that the Bank has met its obligation to organise the environmental information relevant to its functions with a view to its progressive dissemination to the public. While at the time that the present complaint was lodged in 2016, most of the documents listed by the Complainants had indeed not been published, it is noted that the Bank's practice has evolved significantly. The EIB-CM welcomes that the practice continues to evolve and that the Bank is reflecting on the process with a view to further improving it.

¹⁶ See examples of such ESDS here: <http://www.eib.org/attachments/registers/52436738.pdf>; <http://www.eib.org/attachments/registers/52451105.pdf>; <http://www.eib.org/attachments/registers/67288970.pdf>; <http://www.eib.org/attachments/registers/60329616.pdf>; <http://www.eib.org/attachments/registers/56836013.pdf>; <http://www.eib.org/attachments/registers/57316742.pdf>

¹⁷ From a review of a sample of allocation proposal forms, it appears that these forms do not contain environmental information subject to active dissemination.

6. CONCLUSIONS

6.1 The EIB-CM has examined the Complainants' allegations concerning certain practices of the Bank and their alleged non-compliance with the Bank's policy framework concerning transparency and in particular with the Bank's duty to organise and progressively publish environmental information relevant to its functions.

6.2 The EIB-CM found that while on the date of the filing of the present complaint certain documents, such as ESCSs, were not published on the register, the Bank has since started publishing them on the register and has made significant headway in this respect in line with its obligations to organise the environmental information relevant to its functions and to make it progressively available to the public.

6.3 Concerning the Complainants' allegation that a list of specific types of documents should be included on the register in order for the Bank to fulfil its obligations under Article 4 of the Aarhus Regulation, the EIB-CM concludes that the Bank's current practice is in line with the duties of the Bank. In reaching this conclusion, the EIB-CM took into account that the relevant environmental information is streamlined by the Bank in several key documents, most notably ESDSs and ESCSs. Finally, the EIB-CM took note of the Bank's TP which requires the regular update and development of the list of documents published and that in practice there is a growing number of types of project-related documents that the Bank publishes on the register and website on a regular basis.

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26.03.2019

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26.03.2019

7. LIST OF ACRONYMS

CMPTR	EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
ESCS	Environmental and Social Completion Sheet
ESDS	Environmental and Social Data Sheet
ESIA	Environmental and Social Impact Assessment
ESMS	Environmental and Social Management System
NTS	Non-Technical Summary
PCR	Project Completion Report
ReM Framework	Results Measurement Framework
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TP	Transparency Policy