Comments on Draft EIB Transparency Policy, version October 2009

The meeting in Brussels on 9th November was very encouraging. Here are some points that I made at the meeting and some further points.

I. Aid Effectiveness and Transparency

1. There are steps that the Bank could already be doing to improve transparency in the field of development aid. The Paris Declaration on Aid Effectiveness was signed in 2nd March 2005, and the Accra Agenda for Action was adopted on 4th September 2008. While the Agenda remains to be elaborated for certain classes of country, its principles are clear and appear to be ready for implementation by all donors, including IFIs.

2. The EIB has apparently adhered to these two instruments. The EIB should be at the forefront in implementing the principles of those two documents, to the extent that they apply to the particular development aid mandate of the Bank. The Bank should report on its action under the head of the twelve OECD implementation indicators for 2010. The Bank should declare how far, in its view, they apply to the Bank’s activity and, in so far as they do, announce a programme that the Bank sets itself for implementing them. If it entails extra resources, the Bank should state when it will allocate them.

3. Many of the principles that the EIB has accepted concern transparency. The Paris Declaration speaks, for instance, of:
   • transparent procedures for providing aid
   • mutual accountability of donors and partners
   • aiding developing countries to provide data for better decision-making
   • promoting transparency in the use of partner countries development funds.
   • adopting common formats for reporting and common definitions.

4. What does the Bank plan in these fields? Point 1.7.1. of the Transparency Policy Paper makes a pale reference to actively promoting “transparency with its counterparts”. The Bank should state what it has achieved, and what it hopes to achieve under this head.

5. Contrary to what I understood to be said at the meeting, I could find no reference in the paper to the International Aid Transparency Initiative.

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1 See [http://www.oecd.org/document/22/0,3343,en_2649_3236398_36074966_1_1_1_1,00.html](http://www.oecd.org/document/22/0,3343,en_2649_3236398_36074966_1_1_1_1,00.html)


3 Examples of possible action by the Bank are given in a letter of intent concluded with KfW and AfD of December 2005: [tripartite letter of intent](http://www.oecd.org/dataoecd/57/60/36080258.pdf).
launched in Accra, on the occasion where the Agenda for Action was officially adopted.⁴

II. Adoption of EU openness principles

By Article 15⁵ of the Treaty of Lisbon, entitled the Treaty on the Functioning of the European Union, the Bank is bound to adopt rules of procedure that reflect Regulation 1049/2001. Here are some points for the Bank to adopt, always noting that the Bank differs from EU institutions in that most public requests apparently concern information rather than documents. Bearing that in mind, the Bank should:

1. Reflect recital (2) of the Regulation by treating openness as a means to render its decisions and actions more “effective” and the Bank more “accountable to the citizen”. For this purpose, amend paragraph i.2, second sentence, to read: “The Bank believes that transparency improves the effectiveness of its action and helps to the work of its staff with the Bank’s mission.”

At the same time, the Bank should drop the transparency objectives of “reputation” (point 1.3.1) and “credibility” (points i.2 and 1.7.1), since these values can be achieved only indirectly, thought the pursuit of correct primary policies.

2. Endeavour to track more closely the grounds for refusal to disclose documents and information given in Article 4(2) of the Regulation. For this purpose, delete the last subparagraph of point 5.2.3 and replace it by these words: “The jurisprudence of the ECJ holds that the existence of an overriding public interest in disclosure is to be determined case by case. While it is ultimately a matter of law, the Bank provisionally adopts the non-limiting presumption that information about harmful emissions, including greenhouse gases, or about potential human rights violations are of overriding public interest.”

3. Strive to publish all international and other governmental agreements concluded by the Bank, in line with Article 11.

4. In line with Article 17, publish an annual report on public requests for information and on the Bank’s grounds for refusal.

5. Referring to Article 4(4) of the Regulation, alert counterparties to the possibility that documents or information may be disclosable on request. For this purpose, record this fact in the finance contract, and ensure that a contact point is established who has authority to permit the Bank to publish information or a document supplied by that party.

6. Strengthen point 9.4 to read: “The Bank urges promoters (1) to be open about the public impact of the project that the Bank appraises or agrees to finance and (2) to endeavour to seek the consent of persons who are materially affected by the project. This practice is reflected in the Bank’s handbooks.”

⁴ http://aidtransparency.net/
⁵ “Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph [including Regulation 1049/2001].”
7. Provide at point 5.2.7, that “where the Bank concludes a confidentiality agreement with a promoter, it specifies in advance the class of information that the Bank may disclose. Where a citizen’s enquiry is not covered by the promoter’s prior consent, the Bank seeks its consent. Where the promoter refuses consent, the Bank so informs the enquirer.”

III. Other Reforms

1. It is good that finally, in principle, the Bank has announced that it intends to publish provisions from finance contracts, save for the provisions which are commercially sensitive. The Bank should include in the policy paper its proposed action in relation to past and future finance contracts.

2. At point ii.8 the paper states that “the Bank takes account [off] and commits to comply with”...the principles of the “European Transparency Initiative”. On the face of it, this initiative concerns, above all, a lobbyist register. One is alarmed to think that this could be relevant to the Bank. The EIB should provide a link to the document referred to, should tell us which of its principles apply to the Bank, and should define the proposed mode of implementation.

3. The paper should drop the concept that transparency serves the Bank’s own interest. For example in paragraph 4.2 states that “loyalty and independence” means “acting solely in the interest of the Bank”. Since it is a public organisation, the personnel and directors of the Bank should act primarily in the public interest and only secondarily in the interests, or rather legitimate interests, of the Bank.

IV. Wording and Style

The document is badly written. It is so badly written that it exposes the Bank to ridicule, both internal and external. The Bank should apply red ink to most of the first section and in many other passages. To give three examples:

1. The very first sentence of the paper sets the tone:

“The present policy is an integral part of the EIB’s Corporate Responsibility Policies, which underwrites institutional sustainability through the use of our competitive advantage, the productive use of resources and good governance.”

If this sentence means anything, it is no more than that “transparency is a good thing.” The quoted sentence is grammatically wrong, it misuses economic terms, e.g. “competitive advantage” for “comparative advantage” and it invokes the questionable and obscure concept of “institutional sustainability.”

Generally, the word “sustainable” should be defined. It, or its root, is used twelve times in the report, and it means next to nothing. Its potential meaning is best limited to the original definition given by the Brundtland Commission in 1987, namely “Meeting the needs of the present generation without compromising the ability of future generations to meet their needs.” The word should be used only where this meaning is intended.

2. Secondly, paragraph i.5 first sentence reads:

“EIB understands transparency to refer to an environment in which the objectives of policies, its legal, institutional, and economic framework, policy decisions and their
rationale, and the terms of EIB’s accountability, are provided to the public in a comprehensive, accessible, and timely manner.”

This seems no more than that “the Bank should explain itself clearly.” Regrettably, this sentence shows how the Bank fails in this aim.

3. Thirdly, paragraph 1.4.2:

“1.4.2 The EIB is committed to give stakeholders access to the information that will enable them to understand its governance, strategy, policies, activities, practices, performance, impacts and outcomes with a view to allow stakeholders to take their actions and decisions on an informed basis.”

This means no more than that “the Bank informs people to make them informed”. It would be better to say simply that “Information breeds understanding”.

V. Other Editorial Changes

The following editorial changes, among many, would help give greater conviction to the paper:

- Generally remove the word “stakeholder” and replace it, according to context, by one or other of the following words or phrases: “citizens”, “citizens and groups”, “the public”, “third parties”, “shareholders”, “affected or interested persons”, “members of staff”, etc. The word conceals loose thinking. It is an overworked expression.
- In particular, “Internal stakeholders” means, presumably, “board members, management and staff”. The paper should be explicit.
- Generally remove the word “committed” and words of common root. It is usually mere surplusage. Just state what the Bank does. That is commitment enough. The same is true of the word “engaged”.
- Reduce the use of the word “corporate”, since the Bank is, as the paper rightly states at point 1.2, a bank and a public institution. It is not a corporation. Its duty to the public is stronger than that of a private corporation. Replace it, where the concept is required, by the word “institutional”. In particular, most uses of the phrase “corporate governance” or “corporate responsibility” add no meaning to the context. The words are usually better omitted. The paper is about transparency, and not directly about governance or corporate responsibility.

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