Comments on the Draft EIB Transparency Policy

The Arab NGO Network for Development (ANND) is a regional network, working in 12 Arab countries with 9 national networks (with an extended membership of 250 CSOs from different backgrounds) and 23 NGO members. ANND was established in 1997 and its headquarters is located in Beirut, Lebanon since 2000.

ANND aims at strengthening the role of civil society, enhancing the values of democracy, respect of human rights and sustainable development in the region. ANND advocates for more sound and effective socio-economic reforms in the region, which integrate the concepts of sustainable development, gender justice and the rights-based approach.

For more information about ANND: www.annd.org

Contact Person: Ziad Abdel Samad (abdel.samad@annd.org)

Introduction:

ANND welcomes the EIB's initiative to convey civil society organizations to participate to its transparency policy reform. Even if ANND has not been able to come in person to the meeting, our members want to give their contributions to enhance the transparency and efficiency of EIB's operations in the MENA region.

The actual draft is a genuine progress compared to the previous 2010 Transparency Policy, as it introduces a hierarchy of norms where the EIB's transparency policy prevails on any other legal text of the bank. It brings the notion of presumption of disclosure for the general public interest and it reinforces the EIB's engagement toward an ongoing dialogue with the civil society. Nevertheless, this progress should go further, and firstly tackle the critical issue of the conformity between the EIB's operations and the European Union policies as the EIB has deeply increase its actions in Arab countries, since the reform of its external mandate.

Please find below ANND comments to improve and enhance the efficiency of the transparency policy draft.

---

1 According to the article 3.2 "The EIB is a body of the European Union. The EIB is a policy-driven Bank whose mission is to further objectives of the European Union by making long-term finance available for sound investment."
Comments:

1. Since the launch of the Facility for Euro-Mediterranean Investment and Partnership (FEMIP) in 2002, the European Investment Bank intensified its engagement with the Southern Mediterranean Countries (SMCs). Yet with regard to the accessibility of the information the Bank remains committed to a language regime, particularly that of EU. This, noting that the bank declares to pay attention to “public’s needs”, remains limited, as the southern Mediterranean public who principally speak only Arabic cannot benefit from the information disclosed by the Bank, on issues highly relevant to them. Participation of stakeholders from the SMCs in the revision of the draft policy should be used as an indicator in this regard, as the policy itself was only released in English hindering a broad engagement of interested stakeholders from SMCs in the process.

2. In article 4.2 the policy notes that documents that are considered of general public interest will be published. Yet, keeps exemptions in the following sections and under article 4.6 of the Project Information section, as “certain private sector projects are not published before Board approval and, in some cases, not before loan signature to protect justified commercial interests”. There is ambiguity with regard to the exemption made to “certain private sector projects” as the criteria behind the selection of these “certain projects” lack. Moreover, the exception present in article 5.5 “commercial interests of a natural or legal person” should be withdrawn as this justification for non-disclosure could be overused. Moreover, according to the article 5.7\(^2\) the EIB’s definition of the “overriding public interest in disclosure” should include not only “emissions into the environment” but above all possible violations of Human Rights.

3. In article 4.3, EIB website is indicated as the main tool for dissemination of information, yet given the internet users statistics; 3.7% in the Middle East compared to 21.6% in Europe\(^3\), the effectiveness of this tool in the region is open to discussion. The Bank should benefit from diverse channels to provide information, including through the EIB offices at national level where the EIB is operating. In relation, in article 4.12, it is indicated that environmental and social information related to projects are available on the EIB website. Yet, again it should be noted that the local communities who are impacted environmentally and socially by the projects, and thus who should be counted on with regard to the information on the subject, may have no or limited access to internet. Thus this information should be disseminated to them by direct means i.e. briefings organized to local community representatives.

4. Article 4.7 details the needed elements in the project summaries available on the EIB’s website. Nevertheless some crucial data still lack such as the description of the project promoter or financial intermediary and its funders, the socio-economic expectations from the project, the impacts on local

\(^2\) Article 5.7 “The exceptions under 5.5 and 5.6 shall apply unless there is an overriding public interest in disclosure. As regards the first, second and fourth bullet points of article 5.5 with the exception of investigations, an overriding public interest in disclosure shall be deemed to exist where the information / document requested relates to emission into the environment.”

\(^3\) http://www.internetworldstats.com
5. Whereas under article 4.8, the Bank notes that “intermediated loans are published on the Project List on the Bank’s website. In addition and to the extent possible [emphasis added] the Bank releases on request aggregate data on intermediate loan financing, including country and sector breakdowns”. Yet the intermediary lending of the EIB has been long receiving criticism, including from the European Parliament, which urged the Bank to provide details on its approach to accelerate measures addressing these intermediate loans issues and asks for a stringent list of criteria for selection of these financial intermediaries to be established by the EIB jointly with the Commission and be made publicly available. The transparency policy should be a means to reply these concerns and the EIB should provide further transparency and accountability as EU institution.

6. Regarding the article 8.6 about the extractive industries transparency initiative, in order to “promote the initiative in EIB’s contracts with government and national authorities”, the Bank should not only “encourage them to adopt the EITI principles”, but go further by conditioning the grant of loans under a binding clause. The adoption and the respect of the EITI principles by the hydrocarbons extractive companies and the national authorities need to be guaranteed before any contract signature.

7. The efficiency and effectiveness of the Complaints Mechanism referred in the draft policy is problematic for the SMCs given the language limitation. Accordingly it is stated in article 6.2 that “any natural or legal person affected, or feeling affected, by a decision and/or action of the EIB, which includes failure to deliver according to its Transparency Policy, may lodge a complaint with the EIB' Secretary General, by e-mail to complaints@eib.org or by filling in an online form available in all official languages of the EU” [emphasis added]. This challenge can be overcome by allowing lodging complaints at EIB offices at national level where local language speaking officials can assist or by providing complaint forms in all languages where the EIB is operating.

8. With regard to dissatisfaction with the outcome of the complaint lodged, the policy provides the European Ombudsman as an option. Yet, “this is a weak alternative, particularly for external stakeholders… [rather]… the EU judicial system should be used where possible as an independent, reliable and credible accountability mechanism in case harm is caused by the EIB to its external stakeholders”.

4 According to the European Parliament resolution of March 2014, raised its concern with regard to “considerable number of outstanding issues remain unresolved in this area, notably the lack of transparency (especially concerning information about the final beneficiaries), the difficulty in assessing the economic and social impact of the loans (resulting in a flawed targeted approach) and the reliance, via outsourcing of responsibilities, on financial intermediaries for carrying out the due diligence.” (http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0201)

9. Whereas stakeholder engagement is considered key for transparency and accountability of the Bank, the policy stays timid on taking responsibility with regard to ensuring the engagement of local stakeholders. Accordingly it notes that the latter is the primary responsibility of the client. This means that particularly on private lending and through intermediaries, there is no real assurance that the local communities concerns will be taken into consideration. In this respect, the Bank, rather than only facilitating these meetings if deemed necessary, should ensure that these meetings are organized as a prerequisite of lending and the local authorities and the community-based organizations are involved in those meeting. As noted in the policy, local communities would contribute to positive and developmental objectives of the projects and would be monitors of the outcomes, thus of the overall performance of the EIB. Yet as stated being “well-informed” is key and requires EIB to ensure that timely, adequate, up-to-date and relevant information is released and made available to all local stakeholders at each stage of the project cycle.

10. The public consultation is important, as a voluntary commitment of the Bank, yet is restricted due to information dissemination through EIB website or by electronic means only. It should be highlighted that if not accessed and used by local communities, such initiatives’ effectiveness and added value remain limited. Therefore, participatory and inclusive meetings organized at national level with diverse stakeholders should contribute to them, to ensure that all who are interested/concerned are heard and taken into consideration. Thus the meetings organized at national level could take the form of annual sectoral level consultations with the participation of stakeholders from national and local authorities, labor groups involved in the concerned sector, chambers of commerce representing SMEs concerned and the civil society organizations involved in sectoral related work.

11. The previous 2010 EIB’s transparency policy mentioned the evaluation process of the Bank’s operations in the article 8.1 on the principle and article 7.1, 7.2, 7.3, 7.4 and 7.5 on the practice. The withdrawal of the principle to “fully recognize the role of evaluation in increasing transparency and accountability to its stakeholders” is problematic and hinders transparency and accountability. Indeed, evaluation is key in increasing transparency and should be undertaken on social, economical and environmental grounds to measure the positive and negative impacts of the EIB’s operations. Those assessments should be done for each project where the EIB is involved, before and after their implementation in order to compare the expectations and the final results. This project-by-project evaluation would allow the Bank to determine what should be carried on and what could be avoided. Those assessments should be provided to the general public in order to allow the civil society organizations to participate in the evaluation of EIB’s actions.
12. Whereas EIB is noted to promote transparency, given its own transparency score, more should be done by the Bank itself to ensure transparency. In this regard, according to Aid Transparency Index 2013, the EIB scores 26.6%, ranks sixth out of seven IFIs\(^7\). While it is noted that the Bank is in close contact with other EU institutions to monitor new developments in the area of transparency, it should be reminded that the Bank remains scoring 20 percentage points less than the average for EU institutions (46.4%). In this regard, the paragraph 8.7 should be activated and the IATI reporting standard should be implemented without any delay.

13. The reference to “sustainable development” has been eliminated from the transparency policy\(^8\). This is challenging given that the global agenda is currently focused on the issue and for around adopting a new sustainable development agenda. In this context and in line with its mandate, the EIB rather should include sustainable development as a binding principle for each project, particularly in developing countries the EIB engages.

14. Last but not least, as the EIB favor the private sector as interlocutor in most of its projects, and in conformity with the last resolution of the Human Rights Council on June 25\(^{th}\) 2014 related to “Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights”\(^9\), in order to ensure accountability, the bank should implement a binding principle toward its private clients with their engagement to respect in any circumstances human rights, before any contract signature.

\(^7\) [http://ati.publishwhatyoufund.org/](http://ati.publishwhatyoufund.org/)

\(^8\) Article iii of the 2010 Transparency Policy : (The EIB) “operates within a framework established at EU level covering human rights, democracy and rule of law in countries and regions in which the Bank operates. On environmental and social issues it is guided by EU law and regulations, including those for assessing the impact of projects it supports, to help meet the challenges of achieving sustainable development. The detailed principles and standards are spelt out in the EIB Statement on Environmental and Social Principles and Standards”