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<th>Comment Nr</th>
<th>Topic</th>
<th>Stakeholders' Comments: ID &amp; Proposal</th>
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<tr>
<td>1</td>
<td>General</td>
<td>CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): EIB should consider the fusion of the two policies, Transparency and Public Disclosure. Transparency International (received 23 July 2009)... we would welcome the merging of the EIB Disclosure and Transparency Policies into one comprehensive document. Amnesty International EU Office (received 24 July 2009): Considering the inter-connected nature of the three policies as well as the similar institutional and policy framework that they share, it might be advisable for the EIB to merge them in a single policy document, to ensure clarity, coherence and simplification. R. Dunnett (received 24 July 2009):... to examine the idea of merging the three policies under discussion.</td>
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<td>2</td>
<td>General</td>
<td>CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): The Bank should ensure that it holds and provides access to all information and documents about operations that it is involved in, especially environmental and social information like environmental impact assessments, environmental management plans, economic, affordability, and cost-effectiveness analyses or resettlement plans.</td>
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<td>3</td>
<td>General</td>
<td>Les Amis de la Terre, France (received 22 July 2009): Toutes les informations environnementales détenues par la Banque doivent donc être rendues publiques, et notamment : - Les études d'impact environnemental ; - Les obligations environnementales et sociales incluses dans les contrats signés entre la BEI et le promoteur du projet ; - Les rapports de suivi des projets. CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): The results of the EIB's own environmental, social and economic assessment (Appraisal Report) should be available to the public in advance of the ultimate decision of the Board of Directors (approval). Transparency International (received 23 July 2009)... EIB should routinely publish more information concerning social and environment evaluations and assessments and in keeping with the spirit of the Aarhus Convention.</td>
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<td>4</td>
<td>General</td>
<td>CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): EIB...should require from the borrower that information be disclosed and disseminated in a proper manner and language, taking into account the conditions where the project is located. Environmental and social information should be actively disseminated before project approval by the Board of Directors. In case of Public-Private Partnership projects EIB It is a requirement of the Bank that, for environmental legislation, the Borrower discloses and disseminates project information in a proper manner and language outside EU. Within the EU the promoter is subject to the EIA Directive. The Bank publishes environmental information prior to Board approval, whenever is possible. In cases</td>
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Bank Response

The Bank welcomes the proposal and agrees to merge the Transparency Policy and the Public Disclosure Policy. The policy will be renamed Transparency Policy.

These documents are necessary for the Bank to carry its appraisal/due diligence of any operation. Access to such documents is defined in the Transparency Policy.

We acknowledge the comments. We would like to remind that access to information will be assessed in accordance with the Banks' Transparency Policy.

The Bank is currently considering how to enhance timely access to information with the overall decision making process.
should require Project Promoters to disclose: (a) the affordability assessment including a full assessment of the risks for users, taxpayers, workers and the government, including if the project fails; (b) the Public Sector Comparator (PSC) calculation, along with an explanation of the methodology; (c) draft PPP contracts; (d) tender documents, bids and contracts, including financial details.

when prior publication is not possible the relevant information is published thereafter subject to confidentiality constraints. The Bank furthermore provides information on such disclosure giving the number of projects for which an EIA was required and the number of projects published before board approval. The Brief on implementation on the EIB’s Public Disclosure Policy 2008 provides additional information

Access to documents is covered by the Transparency Policy.

Transparency International (received 23 July 2009): TI strongly supports the work of the Global Transparency Initiative which recently designed the Model World Bank Policy on Disclosure (May 2009) and we impress upon EIB to consider the contents of this Model Policy in conjunction with all other submissions.

The Bank is open to further discuss improvements to its Public Disclosure Policy and we noted the Model which is for the World Bank.

Amnesty International EU Office (received 24 July 2009): Provide a public database which will include information on clients and their role in EIB projects.

R. Dunnett (received 24 July 2009): the policy paper cites many categories of document. In many cases it does not state whether the Bank publishes them or not and, if so, whether automatically or on demand. Since that is the point of the paper, it had better be made explicit for each document and class of document.

CLIENTEARTH (received 22 July 2009): Whilst the Bank’s website indexes many documents, it does not seem to have a register, and the Policy does not mention a register. The Bank should create such a register on its website and describe the register in the Policy. Among the information that is to be made available through this means are “authorizations with a significant impact on the environment and environmental agreements; environmental impact studies and risks assessments concerning environmental elements”. Both are documents held by the Bank.

In addition, article 17 of Regulation 1049/2001 provides that “each institution (and bodies) shall publish a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register”. The Bank should
commit in the Policy to publish such a report on a yearly basis.

The document on "Access to Environmental Information" provides easy access to environmental information available on the EIB website or which can be obtained on request.

The Bank is looking at the feasibility of providing more systematic information.

Whilst it is the Bank's role to assess the conformity of projects with relevant environmental laws, the purpose of the Art 21 procedure is to give the Commission an opportunity to express its views on the overall compatibility of projects with Community objectives and policies.

The draft has been revised to reflect the Statement. Please see paragraphs 32 and 39-40 and 42 of the Statement - with regards to the EIA Directive the Statement states that "In projects (outside EU) for which the EIB requires a formal EIA, the EIA process and content must be consistent with the requirements of the EU Directive".

Even though as the EIB is not a direct addressee of Regulation (EC) 1049/2001, it follows its principles as a key reference. Through Regulation (EC) 1367/2006 insofar as access to environmental information is concerned...
all other Community institutions and bodies.” In addition, article 3 of Regulation 1367/2006 provides that “for the purposes of the Regulation, the word ‘institution’ in Regulation (EC) No 1049/2001 shall be read as “Community institution or body”’. Regulation 1049/2001 therefore applies to the EIB. It is therefore not only “a key reference for the Bank’s disclosure policy” but the regulation by which the EIB is legally bound. Yet, the Bank seems to make a distinction between Regulation 1367/2006 and Regulation 1049/2001 and states that “the Public Disclosure Policy shall be interpreted in accordance with the provisions of that regulation (the Aarhus regulation) whenever the latter are applicable”. The Policy should make clear that it shall also be interpreted in accordance with the provisions of Regulation 1049/2001.

**CEE Bankwatch/ Global Transparency Initiative and Counter Balance Coalition** (received 22 July 2009): EIB needs to reconsider its approach towards the the Aarhus Convention and needs to examine which of the obligations stemming from the Convention itself and Aarhus Regulation apply and how to assure compliance. It is not clear whether the EIB treats the Aarhus Regulation in the same way as it does the EIA Directive, meaning whether it requires that all the projects it finances are in compliance with the Aarhus Regulation and Aarhus Convention.

**Access to environmental information:** The EIB should make sure that it possesses and updates all environmental information relevant to the EIB and its operations. The EIB should consider what information is needed in order to ensure compliance with its own policies (for example the Statement on Environmental and Social Principles and Standards). The current policy does not ensure that the EIB holds environmental information relevant to its function and obligations. It is unclear, for instance, what environmental information the EIB requires from the borrower in order to conduct proper environmental due diligence. A Non-Technical Summary of the Environmental Impact Assessment Report is in our opinion not enough to ensure proper appraisal. Policies should moreover include requirements for ensuring that the information is up-to-date, accurate and comparable. The EIB should collect and actively disclose environmental information it collects during the appraisal process and afterwards. Furthermore according to the Aarhus Regulation, the institution should organise environmental information with a view to its active and systematic dissemination to the public. The Bank should make efforts to make more information available on its website automatically, on a routine basis, especially the Bank’s own environmental and social assessments of the operations.

− **Public Participation** - The EIB prepares plans and programmes...
which relate to the environment and are required under legislative, regulatory or administrative provisions (Sixth Community Environment Action Programme) and therefore should ensure public participation opportunities when all options are still possible.

The Bank is committed to the principle of presumption of disclosure of information. This principle is based on the concept of information rather than documents and, as such, covers a wide range of access to information, which can include information that may not be necessarily available on a single document. The possibility of requesting information, thus being "upon request" is closely related with the concept of the principle of presumption of disclosure of information. However, the EIB agrees to run public consultations of its own general strategies and policies.

The Bank should make efforts to make more information available on its website automatically, on a routine basis, especially Bank’s own environmental and social assessment of the operation. Therefore we propose that the formulation of the presumption of disclosure principle (point 65 of the Transparency Policy): “All information held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure”, be changed to: “All information held by the Bank is subject to disclosure, unless there is a compelling reason for nondisclosure”.

Les Amis de la Terre, France (received 22 July 2009): « Principe de diffusion des informations : la politique de divulgation de la BEI est fondée sur le principe de diffusion des informations, conformément à la législation européenne, à celles des États membres et aux normes internationalement admises. Toute information détenue par la Banque est divulguée, à moins qu’il n’existe une raison impérative pour qu’elle ne le soit pas (...) »

Transparency International (received 23 July 2009): Presumption of disclosure is welcome however disclosure and access to information needs to be the rule so the words ‘upon request’ should be deleted. We would like to see the EIB moving towards greater routine publication of information through its website rather than responding to requests for information or specific project disclosures.

CLIENTEARTH (received 22 July 2009): The Bank should disseminate more information through its website instead of requiring members of the public to make requests, in accordance with Article 4 of Regulation 1367/2006. The regulation imposes "an active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology in accordance with articles 11(1) and (2), and 12 of Regulation 1049/2001".

Association Survie (received 24 July 2009): Baser la divulgation de l’information « sur demande » limite considérablement la portée de cette politique. Cela implique une démarche supplémentaire pour le public, qui fait déjà face à de nombreuses difficultés pour appliquer son droit de contrôle sur les activités de la BEI et des autres institutions européennes.

Outre cet éloignement du citoyen, ce choix risquerait d’augmenter la suspicion à l’égard des pratiques de la BEI. Une divulgation automatique et systématique de l’information est indispensable pour garantir aux citoyens un accès rapide et efficace aux données relatives aux projets et disclosure and related constraints are applied.
leur permettre de réagir ainsi en amont de leur acceptation par les instances dirigeantes de la Banque.


The Bank would assess any refusal provided by the promoter against the exceptions provided for in the Transparency Policy. In its response the Bank will state the grounds for the refusal.

Even though as the EIB is not a direct addressee of Regulation (EC) 1049/2001, it follows its principles as a key reference. Through Regulation (EC) 1367/2006 insofar as access to environmental information is concerned Regulation 1049/2001 covers also the Bank.

The Bank disagrees that it would rely on a wrong legal basis for its Transparency Policy. The obligation of professional secrecy imposed by Article 287 of the EC Treaty cannot be distinguished from the general duty of the EC institutions and bodies to protect justified business secrets.

The current Public Disclosure Policy establishes a balance between the Bank’s duty to protect business confidentiality and its commitment to transparency following Regulation 1049/2001 as a key reference.

The Bank would assess any refusal provided by the promoter against the exceptions provided for in the Transparency Policy. In its response the Bank will state the grounds for the refusal.

Even though as the EIB is not a direct addressee of Regulation (EC) 1049/2001, it follows its principles as a key reference. Through Regulation (EC) 1367/2006 insofar as access to environmental information is concerned Regulation 1049/2001 covers also the Bank.

The Bank disagrees that it would rely on a wrong legal basis for its Transparency Policy. The obligation of professional secrecy imposed by Article 287 of the EC Treaty cannot be distinguished from the general duty of the EC institutions and bodies to protect justified business secrets.

**CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition** (received 22 July 2009): The regime of exceptions
should be based on the principle that access to information may be refused only where the EIB can demonstrate that disclosure would cause serious harm to one of these interests, which are listed in points 25 and 26 and that the harm to these interests outweighs the public interest in disclosure. We propose to change the points 25 and 26 in the following way:

"Access to information shall be refused where disclosure would cause serious harm to:
- the public interest, as regards international relations or the financial, monetary or economic policy of the EU, its institutions and bodies or a Member State;
- privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data.
- commercial interests of a natural or legal person, including intellectual property"

"Access to information will also be refused where disclosure would seriously undermine the protection of:
- court proceedings and legal advice;
- the purpose of inspections, investigations and audits"

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): The EIB should change its definition of "commercial interest". The current draft of the PDP assumes that "commercial interest" covers information agreed between the EIB and counterparts to be confidential, no matter whether the disclosure would undermine the interest of the counterpart. Only information which would, or is likely to, cause serious prejudice to trade, industrial, technological, technical, organisational and the legitimate financial interest of the counterparts should be confidential.

CLIENTEARTH (received 22 July 2009): The Bank cannot possibly satisfy itself with such a vague formulation. There needs to be a transparent procedure according to which the Bank decides to disclose or not to disclose information on projects. The Bank cannot discretionary decide not to disclose information on a specific project without stating any reasons or relying on applicable EC regulations. Regulation 1049/2001 and Regulation 1367/2006 apply. What is confidential and what is not confidential has to be decided in compliance with article 4 of Regulation 1049/2001 and article 6 of Regulation 1367/2006. When there are commercial interests, the Bank still needs to consider and demonstrate, to be able not to disclose the requested information, that there is not any overriding public interest.

Transparency International (received 23 July 2009): TI would like to

According to Regulation 1367/2006 (15): The Term "commercial interest" covers confidentiality agreements concluded by institutions or bodies acting in a banking capacity. Even though as the EIB is not a direct addressee of Regulation (EC) 1049/2001, it follows its principles as a key reference. Through Regulation (EC) 1367/2006 insofar as access to environmental information is concerned Regulation 1049/2001 covers also the Bank.

The Bank would assess any refusal provided by the promoter against the exceptions provided for in the disclosure policy. In its response the Bank will state the grounds for the refusal.
see a set of clearly defined criteria that have to be met before disclosure of a document can be refused. In its current form, Article 27 does not identify the kinds of cases that this article would apply to and of course this in turn introduces excessive discretion into the decision-making process on when to disclose documents. This discretion sits very uncomfortably with the overarching presumption of disclosure which is clearly stated in Article 21.

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): The Appraisal Authorisation, Appraisal Report, Note to the Commission and Member States do not contain opinions for internal use as part of deliberations and preliminary consultations. These are the documents that are drawn up by the Bank in the formal appraisal process and constitute the official results of the Bank’s own due diligence. The Bank’s own project assessment (economic, financial, social or environmental) is a requirement of the other policies that the Bank has applied to itself or are applicable to the Bank on the basis of legal documents (for example the EIB Statute, Art 21).

Official minutes from Board of Directors and Board of Governors meetings do not constitute opinions for internal use only. The decisions of the Bank’s governing bodies constitute public information. The EIB should refer to the Council of European Union practices for disclosure of information. In terms of transparency of the Board of Governors the EIB should adopt the procedure used by the Council of European Union which also consists of ministers of the Member States. The EIB should make public a provisional agenda of the Board of Governors meeting, background documents and minutes from the meeting. Individual statements by the Member States should also be made public unless there is a compelling reason for confidentiality.

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): The EIB must also significantly improve the transparency of its governing bodies. ...We propose that the EIB publishes minutes from the Board of Directors meetings that include a list of decisions made and the reasoning. In terms of transparency of the Board of Governors we recommend that the EIB adopts the procedure used by the Council of European Union which also consists of ministers of the Member States. The EIB should make public a provisional agenda of the Board of Governors meeting, background documents and minutes from the meeting. Individual statements by the Member States should also be made public unless there is a compelling reason for confidentiality.

Disclosure of documents depends on case by case assessment of each request taken into consideration constraints defined in the Transparency Policy.

We take note and consider the possibilities of providing more information in accordance with the provisions of the Transparency policy Policy.
Les Amis de la Terre, France (received 22 July 2009): Les Amis de la Terre recommend that so be made public the views of: - the Commission européenne, - the member states concerned, - and the Committee of Directors. We demand also that each time their meeting is completed, the minutes be published. 

R. Dunnett (received 24 July 2009): The members of the organs of the Bank are entitled to deliberate freely in confidence in their assessment of the fitness of the borrower and the project for an EIB loan. However, where matters of policy are debated, there should be a presumption in favour of disclosure of internal debate.

Transparency International (received 23 July 2009): TI understands that not all information linked to the EIB's internal decision-making process may be capable of being made public when the decision-making process is still on-going. However, we do not see any reasons why legal advice or opinions should remain secret post decision. We draw your attention to the recent European Court of Justice ruling in the TURCO case. This case established that there was an 'overriding public interest' in publicly disclosing legal advice that had been given during a decision-making process in the EU institutions. The EIB, as an EU institution, is bound by this ruling. 

CLIENTEARTH (received 22 July 2009): Article 4 paragraph 3 second indent provides that "access to documents containing opinions for internal use as part of deliberations and preliminary consultations shall be refused ... if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure". The Bank cannot therefore just decide to refuse to disclose these documents. It has to weigh the different interests in balance and demonstrate that there is not any overriding public interest in disclosure. (…) The same reasoning should thus apply to the Bank as well. Any refusal by the Bank that would not demonstrate the lack of overriding public interest in disclosure would thus be illegal.

The Transparency Policy is an overarching policy which does not differentiate between policy matters or other, as such the principles for disclosure and related constraints apply.

The EIB is aware of the Turco case which concerned access to a legal opinion relating to a legislative process. As confirmed by the ECJ, wider access should normally be granted to legal opinions provided in the context of such process. The Court did not conclude that legal opinions in general could not be protected from disclosure.

The EIB has been made aware of the Turco case which concerned access to a legal opinion relating to a legislative process. As confirmed by the ECJ, wider access should normally be granted to legal opinions provided in the context of such process. The Court did not conclude that legal opinions in general could not be protected from disclosure.

Disclosure of documents depends on the ad hoc assessment of each case taken into consideration constraints defined in the Transparency Policy. In case access is refused, the Bank's response will state the grounds for the refusal.

§ 28

Broad exception to the general presumption of disclosure to justify non-disclosure
§ 30

Disclosure of Finance contract and or envi/social conditions

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): As far as there is confidentiality applied to the Finance Contract, the part of the document which contains the environmental and social conditions that the Project Promoter should fulfill, must be made publicly available. This information should be subject to routine disclosure, as it is of significant importance.

R. Dunnett (received 24 July 2009): finance contracts are the key expression of Bank policy. While the financial provisions are not a matter of public concern, the borrower's covenants and conditions that relate to development, environment, and social and other matters of public interest ought to be disclosed. Borrowers may fear that the terms may raise the bar in terms of their obligations to third parties. If that objection is made, the Bank should welcome it. It would show that the covenants have effect, and it would reinforce them.

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): All contracts with public authorities should be disclosed. The European Investment Bank and the partner State constitute public institutions. Agreements between public institutions should be subject to disclosure as information of general public interest. There is no commercial interest involved between EIB and the state concern as neither acts for profit.

CLIENTEARTH (received 22 July 2009): This paragraph provides that the Finance Contract ... not subject to disclosure. This provision does not comply with the Aarhus Convention, Regulation 1049/2001, and Regulation 1367/2006. Notwithstanding the fact they are decisions to finance projects, the EIB’s decisions thus may clearly amount to decisions in environmental matters subject to the provisions of the Aarhus Convention provided they contain measures concerning the environment.

The Bank apparently recognises this requirement, as it is noted in paragraph 37 of the Policy: “If only parts of a requested document are covered by any of the constraints above, information from the remaining parts shall be released.” But this requirement seems to be contradicted by paragraph 30, which categorically provides that all finance contracts will be withheld. By generally identifying all finance contracts as a category of documents that the Bank will not release, the Bank effectively disregards the requirements of Article 4(6) of the Regulation and the judicial interpretation of that Regulation.

The finance contract is the legally binding mechanism by which the Bank’s loan projects are implemented, and it is therefore a critically important document for understanding the Bank’s activities. The public has a right to know the terms of the contracts relating to environmental

EIB considers that Finance contracts contain confidential information the protection of which must be afforded on the basis of the exceptions provided for in the Transparency Policy. In accordance with that policy, the possibility of a partial disclosure will be considered including carrying out the assessment of the different interests at stake.
and social obligations imposed on the promoter by the Bank. Only by reviewing the terms of the contract can the public see, for example, if the Bank is meeting the commitments it has made in its SESPS.

16 § 32

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): Management proposals should be released before project approval with other relevant documents (like bank's environmental and social assessment and nontechnical summary of EIA or ES), as soon as they are drawn up by the Bank. The Management Proposal includes the result of the EIB's own project appraisal. The results of project appraisal should be disclosed before ultimate decisions are made in order to enable the interested public to consider and formulate responses. For the private and public sector information may not be disclosed

The Bank considers that disclosure of such documents before Board approval undermines the protection of the internal decision-making process.

Disclosure of the mentioned information will be assessed in accordance with the Banks' Transparency Policy.

The Brief on implementation on the EIB's Public
only if it falls under the exceptions formulated in the other part of the policy (reference to Regulation 1049).

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): The current draft says that: “However, certain private sector projects are not published before Board approval and, in some cases, not before loan signature to protect justified commercial interests.” This is against the standards used by other IFIs, also those dealing specifically with the private sector, like IFC. All category A and B projects should appear on the website at least 60 days before Board approval and the rest at least 30 days before approval.

CLIENTEARTH (received 22 July 2009): In this paragraph the Bank makes clear that it wants to avoid any public discussion and transparency on certain projects that would be considered as controversial. The Bank should rather engage in discussions with the interested public and demonstrate its will to increase its transparency and accountability. All projects should be published before Board approval and there is even less justification to refuse to disclose information after Board approval.

Les Amis de la Terre, France (received 22 July 2009): (…) Nous proposons donc que le point 33 soit modifié ainsi :

« Tous les projets sont inscrits sur la liste des « Investissements envisagés », sur le site Web de la Banque, avant leur approbation par le Conseil d'administration ; les projets de catégorie A et B doivent être publiés sur le site internet de la BEI 60 jours avant examen par le Conseil d'Administration. Les autres projets doivent être inscrit 30 jours avant leur examen par le Conseil d'Administration. »

Association Survie (received 24 July 2009): La proposition actuelle de politique de divulgation offre un champ trop large d'exception : les critères selon lesquels des projets peuvent être tenus confidentiels jusqu'à « l'approbation du Conseil d'administration, voire, dans certains cas, après la signature du prêt » sont trop imprecise (« lorsque des intérêts commerciaux légitimes doivent être protégés », paragraphe 33 ; « lorsqu'il existe une raison impérative pour ne pas les divulguer », paragraphe 61). En outre, il est possible à la BEI de divulguer la plupart des informations relatives à ces projets sans menacer ces intérêts commerciaux, notamment les informations sociales et environnementales relatives aux projets. Il n'y a donc aucune raison pour que des projets soutenus par la Banque ne fassent l'objet d'aucune divulgation, pour

EIB project cycle differs from that of other IFIs. The Bank would assess any refusal provided by the promoter against the exceptions provided for in the disclosure policy. In its response the Bank will state the grounds for the refusal. The percentage of projects not published on our website is negligible. However we acknowledge your comment. The project information is, in principle, published before Board consideration. In cases when prior publication is not possible the relevant information is published thereafter subject to confidentiality constraints. The Bank furthermore provides information on such disclosure giving the number of projects for which an EIA was required and the number of projects published before board approval. For all projects requiring an EIA, public consultation is required by the EIA Directive. Therefore the EIS/NTS is a public document and is available either on the promoter's website or the competent authority carrying out the public consultation. The Brief on implementation on the EIB's Public Disclosure Policy 2008 provides further information on the publication of project information.

Disclosure Policy 2008 provides additional information on the publication of project information:
§ 33-36

R. Dunnett (received 24 July 2009): A recurrent ambiguity is the question of the Bank's refusal to disclose a document because a private promoter or borrower objects. It is unclear whether that objection must be reasonable for the Bank to comply. §§ 33 and 36 imply that the Bank will listen to, but not be bound by, the expressed commercial interest. §80, by contrast, suggests that the Bank is bound by the promoter's refusal to disclose, however unreasonable it is. The differences should be straightened out.

Amnesty International EU Office (received 24 July 2009): Disclosure of third-party documents should also comply with the principle of presumption of disclosure. Allowing states and business partners to impose a veto on documents provided to the EIB will undermine the EIB's stated intention of transparency. The EIB and its clients should adhere to the same best practice standards of presumption of disclosure and well-defined, limited constraints.

Transparency International (received 23 July 2009): TI recommends instituting an internal operational procedure to deal with documents that originate from third parties with the purpose of clearly identifying whether that document is acknowledged by the third party as capable of being disclosed. The proposal from the European Parliament for a revision of EC Regulation 1049/2001 establishes that non-disclosure (of Member State documents) can only be justified on certain bases.

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): Taking into account that Global Loans constitute a significant part of EIB lending, the EIB should improve the transparency of this type of lending. The EIB should make available aggregated data, including environmental and social conditions, type of final beneficiaries and type of investments made. All subprojects of category A or B, together with relevant environmental documents should be made public on the EIB web page. There is no reason why these kind of projects be treated differently only because of intermediary involvement. Financial intermediaries should be required in the Financial Contract to inform final beneficiaries about the EIB and its policies.

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): The EIB is also accountable for information on intermediary banks' operations. Although detailed information on these operations does not constitute information of general public interest, there is certain information that should be made public, such as aggregated data on particular global loans including the type of projects eligible for financing, the number of sub-projects, environmental and social conditions applied, and

GL project summaries do not differ from those for direct lending operations; information on allocations is the competence of the intermediary bank. The EIB encourages the intermediary bank making available information. The NTS or EIS, if applicable, should be on their website. Please note that these are typically for small and medium investments. Intermediaries have to ensure that they apply environmental and social requirements.

The paragraph has been reworded to provide more clarity: The EIB encourages the intermediary bank making available information. (see new document 5.2.10)
information about financial intermediary procedures for ensuring compliance with relevant legislation. All subprojects of category A and B should however be listed on the EIB webpage, including NTS or EIS. 

Association Survie (received 24 July 2009): ...lors de prêts intermédiaires, les mêmes règles de divulgation doivent prévaloir : Au lieu de se contenter de fournir « des données synthétiques sur les financements au titre de prêts intermédiaires, y compris une répartition par pays et par secteur », la BEI doit exiger à ces partenaires financiers bénéficiaires de diffuser les mêmes informations, et les relayer.

Les Amis de la Terre, France (received 22 July 2009): « Les prêts globaux et participations à des fonds d’investissement envisagés sont publiés dans la liste des investissements envisagés 30 jours avant leur examen par le Conseil d’Administration. Les conditions environnementales et sociales attachées à ces prêts sont également rendues publics sur le site internet de la BEI. Les listes des projets financés par les intermédiaires bénéficiaires des prêts globaux sont rendus publics, et comportent la liste des bénéficiaires finaux, les projets menés, et l’examen de leur conformité avec les exigences environnementales et sociales de la BEI. Dans le cas d’une prise de participation à un fonds d’investissement, la BEI rend public le lieu d’enregistrement de ce fonds, les investissements réalisés, et l’examen de leur conformité avec les politiques environnementales et sociales de la BEI »

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): All contracts with public authorities should be disclosed. The European Investment Bank and the partner State constitute public institutions. Agreements between public institutions should be subject to disclosure as information of general public interest. There is no commercial interest involved between EIB and the state concern as neither acts for profit.

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): Framework Agreements constitute documents that are potentially of general public interest and therefore they should be disclosed on a routine basis via publication on the EIB webpage. A presumption of disclosure should also apply to Framework Agreements. Narrowly defined exceptions, as in Regulation 1049/2001, should apply.

Association Survie (received 24 July 2009): ...la proposition actuelle de politique de divulgation revisée mentionne que « la Banque fournit des informations sur les accords-cadres sur demande, à moins que le pays concerné ne se soit formellement opposé à cette divulgation ». Il n’est pas envisageable, pour nous, de conserver cette rédaction qui permet à tout état peu soucieux du respect des droits sociaux et

The Bank discloses Framework Agreements on request, unless the Country concerned has formally opposed to such disclosure. The partner Countries will be informed of the bank’s policy in this respect.

The Bank appreciates that there is scope for wider disclosure of framework agreements although each case should be assessed on the basis of its own merits and in accordance with the Transparency Policy.
environnementaux sur son territoire d'empêcher une institution européenne de faire connaître les conditions dans lesquelles son intervention est prévue.

**R. Dunnett** (received 24 July 2009): the Bank refuses to disclose framework agreements concluded with beneficiary countries. It is anomalous, considering that many of these agreements are published and the equivalent Cotonou framework treaty is published and considering that other international financial organisations would not conclude confidential international agreements that have a general legal effect. However, if undemocratic host countries insist on secrecy, the Bank should at least press for disclosure of those parts of the agreement that concern fiscal and other matters of public interest, without revealing administrative advantages that borrowers from under such agreements might be entitled to obtain.

..., the Bank could disclose more liberally the typical confidentiality agreement that it concludes with borrowers and promoters.

..., the EIB could list more thoroughly the inter-institutional agreements that bear on transparency, whether the Bank is party to them, or bound by duty of solidarity or exhortation to respect them.

**Amnesty International EU Office** (received 24 July 2009): Disclosure of third-party documents should also comply with the principle of presumption of disclosure. Allowing states and business partners to impose a veto on documents provided to the EIB will undermine the EIB’ stated intention of transparency. The EIB and its clients should adhere to the same best practice standards of presumption of disclosure and well-defined, limited constraints. Framework Agreements with partner countries should also comply with the principle of disclosure and therefore, be systematically disclosed.

**CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition** (received 22 July 2009): all partners should be aware of the specific character of the EIB as a public financial institution that adheres to standards shared by other public financial institutions. Partners should accept this and comply with these standards. In particular, the fact that the EIB is considering financing a project must not be treated as confidential or market sensitive information and all projects that are under consideration should appear in the EIB webpage pipeline before their approval.

**CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition** (received 22 July 2009): All category A and B projects should appear on the website at least 60 days before Board approval and the rest at least 30 days before approval.

**CLIENTEARTH** (received 22 July 2009): The Policy should provide the
time limits within which the Bank should post on website information on a specific project. The Policy should also state what "compelling reasons" could justify a later release.

21 § 73

**CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition** (received 22 July 2009): The Project Summary should include information on when the project is planned for approval by the Board of Directors. The Project Summary should include the results of the EIB's own environmental, economic and social assessment process described in the Environmental and Social Practices Handbook.

R. Dunnett (received 24 July 2009): it is not clearly said when the Bank will publish a project summary. § 73 implies that it must be before the loan is signed, at the latest, whereas §75 shows that they will be available at a different site, after signature.

22 § 74

**CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition** (received 22 July 2009): The EIB's own environmental and social assessment should also be available on the website and disclosed before the Board's approval.

R. Dunnett (received 24 July 2009): the Bank says that it encourages its borrowers to make available project documents. This kind of uninspiring statement suggests that the Bank fails to exercise its financial muscle to encourage disclosure.

23 § 71 to 75

**Bank Information Center** (received 24 July 2009): We suggest that in line with best practices being currently adopted, the policy should require disclosure of project monitoring documentation and make them available on the project page along with the Project Summary. The policy should also require that for projects with adverse impacts on environment and society, clients should similarly disclose progress on environmental and social mitigation and remediation measures. Such documentations should similarly be translated to relevant languages and available on the EIB website.

**Amnesty International EU Office** (received 24 July 2009): Ensure that the timeframe for handling of information requests is compatible with commitments towards access to information within the overall decision-making process and cycles of the EIB.

The Bank publishes environmental information prior to Board approval, whenever is possible. In cases when prior publication is not possible the relevant information is published thereafter subject to confidentiality constraints. The Bank furthermore provides information on such disclosure giving the number of projects for which an EIA was required and the number of projects published before board approval. The Brief on implementation on the EIB's Public Disclosure Policy 2008 provides detailed statistical information on the matter [http://www.eib.org/about/publications/brief-on-implementation-of-the-eibs-public-disclosure-policy-in-2008.htm](http://www.eib.org/about/publications/brief-on-implementation-of-the-eibs-public-disclosure-policy-in-2008.htm).

We acknowledge the comments. We would like to remind that access to information will be assessed in accordance with the Banks' Transparency Policy.

The paragraph has been reworded to provide more clarity (see Annex 1 in the new document):

"The EIB encourages promoters to make that information preferably available on their own website."

Possible disclosure of monitoring documents would be assessed according to the Public Disclosure Policy.

Project information is made available prior to board approval. The Brief on the implementation of the Public Disclosure Policy, published on the bank’s website provides evidence that almost all project fiches were published accordingly. In the vast majority of the cases, the documentation was available 30 days or more prior to Board approval.

Requests are normally processed no later than 15...
Topical Project Briefs

§ 78

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): In cases where projects raise considerable public interest, the EIB publishes a Topical Project Brief on its website.

What does “considerable public interest” mean? What does a TPB include? The EIB should disclose on a routine basis all important project documents and information it holds (NTS, EIS, Management Proposal, Note to the Commission, environmental and social assessment and other specific project information).

CLIENTEARTH (received 22 July 2009): The Bank should set some more precise criteria as “considerable public interest” is a totally subjective concept and leaves the decision to publish a TPB to the discretion of the Bank without establishing any transparent and reliable procedure. The policy should also describe what information the TPB will contain.

R. Dunnett (received 24 July 2009): the reference to a Topical Project Brief is very short. It does not explain why or when the Bank would issue such a document, and what precautions would be taken.

We appreciate the point and understand that the Topical Project Briefs is not a well defined term leading to misunderstanding. Availability of wider information on a project is to be considered within the Bank’s general principles of disclosure and are available as such.

Disclosure on request

§ 80

CEE Bankwatch/Global Transparency Initiative and Counter Balance Coalition (received 22 July 2009): The Management Proposal as well as the EIB’s own environmental and social assessment should be published on the website before Board approval. The EIB should make commitments for routine disclosure of all important project related documents and information. All typical project documents should be actively published on the EIB’s webpage. It is especially important to publish before approval the environmental and social assessments of the project in order to enable interested or affected parties to consider it and make appropriate comments.

Amnesty International EU Office (received 24 July 2009): Timing for handling requests for information...there are disparities in the reference period (e.g. working days or calendar days, number of days) given in the Transparency, Public disclosure and Complaints mechanism policies, and this needs to be streamlined, so that all three policies provide for the same timeframes.

CLIENTEARTH (received 22 July 2009): The policy should mention that the request can be made “in one of the languages referred to in Article working days following receipt. The Bank is currently considering how to enhance timely access to information with the overall decision making process.

We appreciate the point and understand that the Topical Project Briefs is not a well defined term leading to misunderstanding. Availability of wider information on a project is to be considered within the Bank’s general principles of disclosure and are available as such.

Procedures for handling information request

§ 90

Amnesty International EU Office (received 24 July 2009): Timing for handling requests for information...there are disparities in the reference period (e.g. working days or calendar days, number of days) given in the Transparency, Public disclosure and Complaints mechanism policies, and this needs to be streamlined, so that all three policies provide for the same timeframes.

CLIENTEARTH (received 22 July 2009): The policy should mention that the request can be made “in one of the languages referred to in Article

EIB accepts a request in any of the EU official languages
314 of the EC Treaty” (article 6 of Regulation 1049/2001). The Policy should mention all these languages.

29 § 100

**CLIENTEARTH** (received 22 July 2009): Article 10 (1) of Regulation 1049/2001 provides that copies of less than 20 pages, and direct access in electronic form, shall be free of charge. Paragraph 100 of the Policy should be revised to reflect that such access is free of charge.

Transparency International (received 23 July 2009): The EIB does not give any guidelines about the range of the fees that may be charged for providing information. We recommend that when a paper copy is provided there should be no charge or we would only expect a minimal charge to be made and would not expect any such fees to exceed the costs of producing copies of the requested information/documents. When information is provided electronically then fees should not be charged.

EIB has not charged anything for documents provided until now that have exceeded 20 pages.

§100 has been rephrased to provide more clarity. (see new draft document “Procedures for handling information”)