COMMENTS ON THE EUROPEAN INVESTMENT BANK’S PUBLIC DISCLOSURE POLICY DATED MAY 2009

Transparency International (TI) welcomes the European Investment Bank’s (EIB) public consultation process on three EIB policies including its revised draft of the Disclosure Policy. TI has been following the EIB open consultations and has previously participated in the 2005 consultation process.

This consultation comes at an opportune time considering the broader context of initiatives aimed at increasing transparency within the work of EU institutions. We highlight the European Transparency Initiative (ETI) Green Paper\(^1\) which launched an initial debate on the disclosure of data about recipients of various EU funds managed by the Commission in partnership with Member States, notably the Structural Funds and Common Agricultural Policy. The ETI has already yielded success by bringing more transparency to the system of EU agricultural and structural fund expenditure by disclosing fund beneficiaries. The pending revision of EC 1049/2001 (Regulation on access to EU documents)\(^2\) is also a matter where TI is very active in promoting maximum access to EU documents.

These steps towards greater transparency and openness are crucial for ensuring the accountability of EU institutions and towards maintaining their credibility. The EIB, as an EU institution, must act and be seen to be acting in accordance with the same standards as other EU institutions. Furthermore, the EIB administers the allocation of public funds for lending activities that span across the world and not just within the EU and we would like to see a clear acknowledgement of accountability to all citizens that are affected by EIB’s lending activities and not just EU citizens\(^3\).

Corruption will always flourish where organisations lack transparent operating procedures and all progress towards increasing access to knowledge about these operating procedures so as to encourage scrutiny from the public will serve to minimise corruption risks.

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2 [http://ec.europa.eu/transparency/access_documents/index_en.htm](http://ec.europa.eu/transparency/access_documents/index_en.htm) explains how legal persons residing within the EU Member States can exercise a right of access to European Parliament, Council and Commission documents

3 Article 6 of the Disclosure Policy 2009 suggests EIB only considers itself as accountable to EU citizens
General comments

Firstly, 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.

Secondly, EIB should routinely publish more information concerning social and environment evaluations and assessments and in keeping with the spirit of the Aarhus Convention.

Thirdly, EIB’s credit facilities finance projects in many developing countries and these projects and their impact are highly visible to the citizens of those countries. It is important to link EIB’s lending activities with the International Aid Transparency Initiative (IATI) and to fully commit to the objectives and the transparency standards of this initiative.

Fourthly, we would welcome the merging of the EIB Disclosure and Transparency Policies into one comprehensive document so as to avoid confusion between standards relating to transparency and operational procedures relating to disclosure. A merger of policies will also help minimise a divergence in interpretations by EIB staff of the disclosure procedures. In particular, paragraphs 64-74 of the Transparency Policy specifically relate to disclosure and should certainly be moved to the Disclosure Policy.

Specific comments

- Articles 15, 17 and 18: TI welcomes these provisions as they clearly acknowledge the link between transparency, lower levels of corruption and higher levels of credibility and accountability.

- Article 21: 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.

- Article 22: The EIB’s lending activities are in fact global and not restricted to a specific European geographical zone. TI would like to see this provision revised so that it is clearly capable of being relied upon by non-EU citizens as they too could potentially be affected by the impact of EIB’s lending activities; particularly social and environmental impacts. TI would welcome an explicit reference of this global entitlement for all citizens to have access to information in this article and such a step would be in the spirit of the Memorandum of Understanding between the EIB and the European Ombudsman (EO) that establishes that the EO is the only authority that can start a complaint when the complainant is a non-EU citizen. This would then be in line with the recently proposed provision for the future Access to EU documents regulation that states “Any natural or legal person…”

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4 http://www.ifitransparency.org

• Article 24: EIB should set out which banking sector standards are being referred to here.

• Article 25: TI welcomes the EIB initiative to streamline its disclosure policy with EC Regulation 1049/2001\(^6\) regarding public access to European Parliament, Council and Commission documents and its successor.

• Article 27: TI would like to 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.

• Article 28: 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\(^7\). 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.

Article 28 of the disclosure policy allows EIB to rely on a very broad exception to the general presumption of disclosure to justify non-disclosure. Such broad exceptions give EIB staff too much discretion in determining how the disclosure policy works in practice and we would recommend further detailed criteria here for staff to operate by.

• Article 36: 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.

• Article 100: 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.

\(^6\) http://www.europarl.europa.eu/RegData/PDF/r1049_en.pdf