



**European Investment Bank**

**Brief on the 1<sup>st</sup> year of implementation of  
EIB's Public Disclosure Policy**

The EIB has evaluated the first year of implementation of its  
Public Disclosure Policy (28 March 2006).

The attached Brief summarises the key results of this evaluation.

## **Brief on the 1<sup>st</sup> year of implementation of EIB's Public Disclosure Policy**

### **Introduction**

On 28 March 2006, after approval by the EIB Board of Directors, the Public Disclosure Policy came into effect. This Brief evaluates the implementation of the policy over the first year<sup>1</sup>, primarily taking stock of deficiencies. The EIB is undertaking actions to correct the shortcomings and to achieve full compliance with the Policy. The next evaluation will be on the implementation of the Disclosure Policy in the year 2007.

### **Key new elements of Public Disclosure Policy (2006) as compared to Public Information Policy (2002)**

- Principle of presumption of disclosure - all information held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure.
- Principle of public interest override – applied in the context of exceptions to disclosure of information.
- Deletion of the restriction that the disclosure policy only applies to EU citizens or legal and natural persons residing in the EU or a state in which the Bank conducts its activities.
- Confirmatory applications in the event of a total refusal or failure by the Bank to reply to a request within the prescribed time limit.
- Independent appeal mechanism to be set up by the Inspector General to handle appeals regarding non-disclosure of information that are not covered by the European Ombudsman.
- Disclosure of the “Proposal from the Management Committee to the Board of Directors” for the financing of public sector projects after Board approval, on request, unless the Board decides not to disclose in a commercially sensitive case.
- Projects to remain on the Project List on the website until they are published in the Bank's Annual Report.

### **Public requests for access to information**

Key in the public's perception and assessment of the quality of the implementation of the Bank's Public Disclosure Policy are: a correct handling of their requests for information and access to documents; transparency regarding grounds for refusal of access to information; and a timely publication of project-related information on the Bank's website.

### **Procedures**

All requests for access to information held by the Bank must be given due consideration. Partial disclosure of requested information is often considered in order to provide as much information as possible (§ 35 of the Public Disclosure Policy). The handling of public applications is subject to procedures (§ 85-87), imposing respect for deadlines and transparency with respect to grounds for non-disclosure and providing for internal and external appeal mechanisms.

In principle, requests for information are handled by the “Infodesk” and the communication officers in the “Public Information and Relations with Civil Society” Division, with input from colleagues elsewhere in the Bank as appropriate. The “Civil Society Unit” in the same division deals with responses to complex requests submitted by NGOs or other members of the public. The Bank's responses to complex requests are cleared systematically with other departments in the Bank and, where appropriate, with external parties such as project promoters, borrowers, the European Commission, or other IFIs.

---

<sup>1</sup> The reference period runs from 28 March 2006 until 28 March 2007, with the exception of the section on the Website Project List, which covers the calendar year 2006.

### Straightforward requests for information

The Infodesk received some 30 000 requests for information in the reference period, a similar number as in the year before, as was the quality of their handling. Around 90% of the requests were straightforward and handled without delay and in any event within 20 working days<sup>2</sup>. No complaints were received in the reference period from applicants on the handling of straightforward enquiries.

### Complex applications

Some 3 000 complex requests, out of a total of 30 000, required feedback from other services or, occasionally, from third parties. They were in principle handled within 20 working days. Where necessary, the extended deadline of 40 working days<sup>3</sup> was applied, a holding letter being sent to the applicant within 10 working days after receipt of the request for information (§ 93-94).

Among these complex requests, 74 were submitted by advocacy NGOs. The average time for processing these NGO requests decreased slightly in comparison with the year before: 21 working days, down from 24 the year before; for 41 requests the extended reply period of 40 working days was applied (down from 54). One request<sup>4</sup> was answered after the 40 working days limit (against 15 out of 94 the year before).

In the event of a total or partial refusal to provide information, or failure by the Bank to reply to a request within the prescribed time limit, the applicant may make a confirmatory application (§101-102 of the Disclosure Policy). Two confirmatory applications were received in the reference period. Confirmatory applications are reviewed at an inter-directorate level and include the directorates which also had an input in the Bank's initial reply.

Two formal complaints with respect to the Bank's handling of public requests for information and disclosure of documents were submitted to the European Ombudsman in the reference period. The outcome of the complaints is still pending.

NGOs submitted two petitions to the European Parliament's Petition Committee, claiming inappropriate handling of their requests for information by the EIB. Both cases are still pending.

The right of applicants to receive information about grounds for non-disclosure of information was on occasion not applied in the detailed way that applicants are entitled to. The European Ombudsman has criticised the Bank in the framework of a complaint submitted by an NGO on EIB's handling of their request for information. Although the Ombudsman concluded that there was no mal-administration, he said the Bank had failed to give complainants sufficiently precise explanations for its refusal to disclose the information requested. He referred to the principles of good administration that require that an institution should invoke valid and adequate reasons for not disclosing information. The Bank should have explained better why, according to its Public Disclosure Policy, non-disclosure was justified.

### **Disclosure of project-related information**

The Bank is committed to publish a complete list of projects under appraisal on its website, with projects appearing on the list before Board approval, unless prevented for legitimate reasons. In 2006, 90% of the projects were published on the Bank's website before Board approval (2005: 89%). Including the projects published after Board approval and before loan signature, the 2006

---

<sup>2</sup> In the reference period the Bank applied a 20 working day time limit for both initial and confirmatory requests. Since 28 June 2007, it applies a 15 working day time limit for information in accordance with the Aarhus Regulation. See for modifications in the Public Disclosure Policy the Policy's edition of 17 July 2007, published on the EIB website.

<sup>3</sup> Similarly, in the reference period the Bank applied a 40 working day time limit for responses to complex requests for information, but since the application of the Aarhus Regulation, as from 28 June 2007, it applies a 30 working day deadline.

<sup>4</sup> The preparation of the reply exceeded the 40 working day deadline by 14 days. The delay was due to typical summer holiday interruptions in contacts with the promoter and the internal validation of the reply.

total comes to 91% (2005: 94%). The number and proportion of non-published projects have increased in 2006, from 14 to 32, and from 6.2% to 9.1% respectively.

Out of the 32 non-published projects, 28 were private sector. The relevant appraisal documents gave no reason for non-publication for 9, while 2 were not published at the express demand of the private promoter. For the remaining 17 projects publication was planned at a certain date (12), often at Board approval, or following the go-ahead of the borrower (5), but not carried out.

The reasons for non-publication of the 4 public sector projects (which by definition must be published) included: a PPP, and therefore considered public sector according to the pipeline rules, but non-publication at the request of the promoter; publication for the project planned but not executed; a Latvian loan for which the EIB tendered and with publication only foreseen if and when the Bank was selected; and one project without explanation.

The Bank has also committed to publishing EIA information when an EIA is required. In 2006, EIAs (or other environmental assessments) were not required for 146 out of the 320 published projects. The situation for the remaining 174 projects was as follows: 35 EIAs were published; 27 EIAs were available but not published; 14 EIAs were not yet available; and for 98 projects EIA requirements were unclear at the time of their posting on the website. This is an unsatisfactory result and improvements have been implemented without delay. An in-depth analysis of the project list has in the meantime reduced the number of projects with unclear requirements to 3 (on which further analysis will be carried out) and the publication rate of environmental information has improved overall.

Finally, project summaries, providing details on various aspects of the loans, should remain on the Project List until they are included in the Annual Report (§73 of the Public Disclosure Policy). However, in the reference period they were transferred after signature from the Project List to the Activity List (of loans), where they remained until they are published in the Bank's Annual Report. With their transfer to the Activity List, the loans lost their detailed summary, which is against the spirit of the policy. With the launch of the Bank's new website in July 2007, the problem has been addressed.

In cases where projects raise considerable public interest, the Bank is to publish a Topical Project Brief on its website (§76). In practice, very few briefs have been published in the reference period as compared with the year before.

### **Other commitments**

The Public Disclosure Policy includes some commitments, which are not directly associated with public access to (project-related) information. The state of play with respect to their implementation is as follows:

- Public consultation on new or revised EIB policies or strategies (§ 64): after a first public consultation in 2005/2006 focused on the Public Disclosure Policy itself, the Bank is currently conducting a public consultation on a review of its Anti-Fraud Policy. This will be followed with a third consultation, on the Bank's Environmental and Social Policy Statement.
- Awareness and capacity building among staff on public disclosure and associated issues (§ 39): after a 6-month training programme on the Bank's relationship with NGOs in 2004-2005, the Bank is now implementing a second programme, which started in the summer of 2007 and is spread out over 4 years. The programme, which builds on the previous one, aims to build and improve the knowledge base and commitment among staff for direct communication with civil society representatives. It contains introductory and in-depth training, as well as presentations for, and discussions with, all interested staff members. The programme also covers related issues, including public disclosure of information. An external consultant has been selected after an open tendering procedure to help organise the programme.

- The European Investment Fund (EIF) is preparing a description of its own situation regarding public access to documents, which will be published separately on the EIF website.
- The commitment that ToRs for an appeal mechanism under the Inspector General will be prepared. The appeal mechanism would cover cases from non-EU citizens or residents not being handled by the European Ombudsman. According to the Ombudsman's 2006 Annual Report: "The Ombudsman normally approaches on a case-by-case basis the question of whether to use the own-initiative power in this way. In response, for example, to concerns expressed by civil society organisations regarding the accountability of the European Investment Bank (EIB), the Ombudsman has made clear that he does have the power to inquire into possible maladministration in the EIB's lending activities outside the European Union (external lending). Moreover, subject to possible future resource constraints, the Ombudsman envisages using the own-initiative power whenever the only reason not to inquire into a complaint alleging maladministration by the EIB in its external lending is that the complainant is not a citizen or resident of the Union." Moreover, the Bank is looking forward, together with the European Ombudsman, for ways to strengthen existing mechanisms.

### **Action Plan**

In view of the above evaluation, an action plan has been formulated involving all directorates concerned to correct the shortcomings that have been identified. Notably, the Bank endeavors:

- To be consistent in giving precise explanations for a refusal of information in order to allow the applicant to verify the justification of non-disclosure.
- To publish project-related information on the Project List on the website in a timely fashion, including Project Summaries and, where appropriate, EIA documents. A tracking system is being put into place allowing for the publication of up-to-date environmental information as and when it becomes available.
- To make detailed project information, as provided for in the Project Summaries, available on the Bank's Website until publication of the loan in the Annual Report - through a link to the Project Summary. With the launch of the new EIB website, project information will be equally complete before and after signature, at least until the project appears in the Annual Report.
- To improve the publication of Topical Project Briefs on the Bank's website, whenever projects raise considerable public interest.

-----