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Brief on the implementation of the EIB's Public Disclosure Policy in 2007

Introduction

This brief evaluates the implementation of the EIB's Public Disclosure Policy in 2007. It is the second annual evaluation to be published, following the 2006 edition (<http://www.eib.org/about/publications/public-disclosure-policy,-brief-on-the-1st-year.htm>), which primarily took stock of deficiencies after a review of the Policy in March 2006 (<http://www.eib.org/about/publications/public-disclosure-policy.htm>). At the time, the 2006 evaluation identified a *lack of consistency* in two areas:

- timely publication of project-related information on the EIB website; and
- the failure to explain to applicants precisely why a request for information had been rejected.

The present brief evaluates, among other things, the results of the action undertaken to correct those shortcomings. A comparison of the 2007 results of the publication of project-related information on the EIB website's Project List with those for 2006 in terms of the proportion of projects published and the timing of the publication showed that the 2007 results were significantly better. As for providing a precise explanation to applicants in cases where information was withheld, in 2007 there were no specific complaints regarding the Bank's performance in this respect.

Adjustment of the Public Disclosure Policy to comply with the Aarhus Regulation

On 17 July 2007 the Public Disclosure Policy was reviewed in the light of the Bank's application of the *Aarhus Regulation*¹, which implements at the level of EU institutions and bodies the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The Regulation aims to help the public to become more involved in environmental matters and to contribute actively to improved preservation and protection of the environment. The Disclosure Policy is interpreted in accordance with the provisions of this Regulation wherever they apply. In the event of a divergence in the environmental field, the provisions of the Regulation shall prevail.

The main amendments made to the Public Disclosure Policy in order to comply with the Regulation were as follows:

- In the chapter on constraints on disclosure of information, the adverb *seriously* was added to where it is stated that access to information can only be refused if disclosure would *undermine* the integrity of the Bank's internal decision-making process, unless there is an overriding public interest in disclosure (§ 26).
- The Bank may refuse access if disclosing the information would undermine the protection of the environment to which the information relates, such as the reproduction sites of rare species (§ 26).
- The period for handling information requests was shortened from 20 to 15 working days (§ 88) and from 40 to 30 working days for complex applications (§ 94).
- For confirmatory applications, which applicants may make in the event of a total or partial refusal, or failure by the Bank to reply to a request within the prescribed time limit, the deadline for making an application was reduced from 20 to 15 working days (§ 101).

¹ Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

- As for appeal procedures, the actions of the Bank shall also be subject to judicial appeal before the Court of Justice of the EU in accordance with the relevant provisions of the EC Treaty, in particular Article 237.

The Bank's application of the above-mentioned shortened deadlines for handling information requests goes beyond the requirements of the Regulation since these shorter deadlines are applied also for *non*-environmental information.

In line with the Aarhus Regulation, which calls for the dissemination of environmental information in an active and systematic way, particularly via the internet, a special section on environmental information was created on the Bank's website to facilitate public access (<http://www.eib.org/projects/topics/environment/access-to-information/index.htm>). Unfortunately, the management of this section faced serious technical problems in the second half of 2007 as a result of a general overhaul of the Bank's website in mid-2007, which caused unforeseen damage to the accessibility of information on the website.

Publication of edited agenda and provisional summary of decisions of the EIB's Board of Directors

Since November 2007, the Bank has been publishing on its website, on a rolling basis, the agenda and provisional summary of decisions of the EIB's Board of Directors². The summary of decisions also includes declarations of conflicts of interest (if any). When the Public Disclosure Policy is reviewed in 2009, a paragraph on the publication of these documents will be added to the Policy, where it is not yet mentioned.

Public requests for access to information

Correct and timely handling of applications for information is crucial in the public's perception and assessment of the quality of implementation of the Bank's disclosure policy, as is transparency regarding grounds for refusal of access to information.

Procedures

All requests for access to information held by the Bank must be given due consideration. Partial disclosure of requested documents is routinely considered in order to provide as much information as possible (§ 35 of the Policy).

The handling of applications from the public is subject to procedures (§ 85-107) requiring compliance with deadlines and transparency concerning the grounds for non-disclosure and providing for internal and external appeal mechanisms.

Requests for information from the public

In principle, applications are handled by the "Infodesk" (Public Information and Relations with Civil Society Division), which can be contacted for all requests for information and documents or any other enquiry concerning the EIB's role and activities.

The Infodesk received over 58 000 (e-mailed) letters in 2007, of which 24 000 were eligible for a response. 90% were handled autonomously by the Infodesk itself, while for the other, more complex requests, the Infodesk called on specialists elsewhere in the Bank. Complex correspondence from civil society organisations (CSOs), in particular advocacy non-governmental organisations (NGOs), was forwarded to the Civil Society Unit in the same Division.

² The documents can be found under "Publications" in the section on the Board of Directors: http://www.eib.org/about/structure/governance/board_of_directors/index.htm.

The Infodesk handled requests without delay and in any event within 20 working days – and within 15 working days as from 28 June, when the Bank started to apply the provisions of the Aarhus Regulation. In cases where replies could not be dealt with within these periods because of their complexity, an extended deadline of 40 and, under “Aarhus”, 30 working days was applied. In such cases, a holding letter was sent to the applicant within 10 working days of receipt of the request for information (§ 93 and § 94 of the Disclosure Policy).

Complex applications from NGOs and other CSOs

Complex requests from NGOs or other CSOs, as processed by the Civil Society Unit, are systematically cleared with other services in the Bank and, where appropriate, with external parties such as project promoters, borrowers, the European Commission, or other international financial institutions (IFIs).

In 2007, 77 applications of a certain level of complexity were received from NGOs and other CSOs, with some 67 originating from advocacy NGOs that continuously scrutinise the Bank’s activities. Of these 77 applications, 63 were lending-focused, with a strong emphasis on operations within the 12 new Member States and the African, Caribbean and Pacific (ACP) countries. A breakdown by sector showed a predominance of energy (23, of which 9 queries concerning nuclear energy), transport (22, of which 7 regarding the aviation sector), and the environment (16). See Tables 1 and 2 for details.

Table 1. Lending- related correspondence from NGOs/CSOs in 2007 by region

Region	Number
EU 27	27
- of which EU 12:	17
Accession & Acceding Countries	2
Mediterranean Partner Countries	2
Neighbourhood Partner Countries	8
ACP countries	14
Asian & Latin American countries	3
Multi-regions	7
Total	63

Table 2. Sectors and topics of correspondence from NGOs/CSOs in 2007

Transport	22
of which:	
- aviation	7
Energy	23
of which:	
- big dam projects	6
- nuclear projects	9
Environment/social issues	16
Mining	3
Global loans	2
Other	11
Total	77

In evaluating the processing of these requests within the set time limits, a distinction must be made between the deadlines applicable before the entry into force of the Aarhus Regulation on 28 June and the shortened deadlines thereafter.

Out of the 43 requests received before 28 June 2007, 32 were handled within 20 working days and for 9 requests the extended period of 40 working days was applied. One request, concerning the Gilgel Gibe I and II projects (Ethiopia), was answered after the 40 working days limit, requiring 59 working days between 26 March and 27 June. The delay was due to the complexity of the request and the absence, because of missions, of competent staff. One NGO lodged a complaint concerning an Environmental Loan Programme in Israel with the EIB's Secretary General, alleging lack of disclosure regarding the EIB's initial response. The Bank agreed to provide the NGO with an annual update by the end of the year.

In the second half of the year, from 28 June 2007 onwards, 34 enquiries were received. Of these, 14 were processed within 15 working days while for 19 requests the extended period of 30 working days was applied. One request was answered after the 30 working days limit and required 41 working days. This request, on global loans in Uganda, was received on 27 September and not answered until 23 November 2007. The serious delay in processing this request was due to the consent that had to be sought under the EIB's Public Disclosure Policy from the various intermediary banks and the fact that the EIB staff concerned were away on mission.

Disclosure of project-related information

A major focus of public interest is the Bank's lending operations. This is reflected in the growing number of requests for information. A key instrument for disseminating project-related information is the Project List ("project pipeline") on the Bank's website (<http://www.eib.org/projects/pipeline/index.htm>). The Bank is committed to ensuring that the Project List is as complete as possible. Summary information on all projects appears on the Project List before Board approval, unless precluded for legitimate reasons of confidentiality (justified exceptions). The trigger date for inserting a project on the list is when the Bank requests the opinion of the Commission (for lending from its own resources) or of the Article 14 and 28 Committees (for lending from risk capital).

A comparison with the results for 2006 shows that, in terms of the proportion of projects published and the timing of publication, the 2007 results compare favorably and that compliance with the rules regarding publication has improved.

In 2007, information on 92% of all projects was published before Board approval (2006: 90%) and on 85% more than 30 days before approval (2006: 80%). Including project information published after Board approval and before loan signature, the 2007 total came to 95% (2006: 91%). As to the timing of the postings, the proportion of projects published after Board approval rose slightly, but, at the same time, the number of projects posted earlier than 30 days before Board approval also increased.

Table 3. Project information published in the web pipeline in 2007

	Number of projects in 2007	Percentage 2007
At least 30 days before Board approval	279	85% (2006: 80%)
Before Board approval	300	92% (2006: 90%)
After Board approval	11 (of which 3 after signature)	3.4% (2006: 1.1%)
Not published at all	16	4.8% (2006: 9.1%)

Table 4. Projects approved in 2007 and not published at all

	2007	2006
Public sector	1	4
Private sector	15	28
Total	16	32

In 2007, 16 projects, out of a total of 327, were not published, of which 15 from the private sector and 1 from the public sector. Of these projects, 15 were not published due to administrative oversight and 1 private sector project was withheld at the express request of the promoter, in line with § 27 of the Public Disclosure Policy. The number and proportion of non-published projects decreased in 2007 from 32 to 16 and from 9.1% to 4.8% compared to the previous year.

In cases where projects raise considerable public interest, the Bank publishes a Topical Project Brief on its website (§ 76). In 2007, 4 of these Topical Briefs were published compared to 2 the year before.

Publication of environmental information in the Project List

The Bank is committed to publishing the Non-Technical Summary (NTS) when Environmental Impact Assessment (EIA) information is required for a project. The first year the Bank published this information was 2006 and the statistical information for that year was not complete. As a result, only 35 NTSs were reported published in 2006. In 2007, the project-related environmental information published on the website was satisfactory. The detailed information is as follows:

Table 5. EIA information on projects approved in 2007 (where an EIA is required) and published on the web pipeline

	Number of projects in 2007
Total projects requiring EIA	75
EIA published	58
EIA to be published later <ul style="list-style-type: none"> • PPP stage 1 • EIA as condition for disbursement 	13 2 11
EIA not published <ul style="list-style-type: none"> • Project not published on website • Project cancelled 	3 2 1
EIA available but not published	1 approved in December 2007, to be published soon
EIA not available yet	0

Out of a total of 75 projects requiring an EIA (out of 327 projects approved, of which 206 were single-scheme investments), the NTSs of 58 were published. The NTSs of 13 were due to be published later. For 11 of these, EIAs were required for disbursement, while 2 were PPP projects, which require publication at a later stage³. Another 2 projects were not published on the web due to reasons of confidentiality and 1 project was cancelled. Finally, for 1 project, which was approved in December 2007, the NTS has not yet been published.

Other commitments

Some commitments that are not directly associated with public access to information are also laid down or confirmed in the Public Disclosure Policy. The state of play with respect to their implementation in 2007 was as follows:

- Public consultation on new or revised EIB policies or strategies (§ 64): in conformity with the EIB's Transparency Policy, the Bank conducted a public consultation on its Anti-Fraud Policy in 2007. It announced in December 2007 the launch of a public consultation on its Environmental and Social Statement, which began in the first quarter of 2008.
- Awareness and capacity building among staff on public disclosure and associated issues (§ 39): a second in-house awareness and capacity raising programme for EIB staff and management on the Bank's interaction with civil society was launched in the second half of 2007, including issues of public disclosure and other transparency issues.
- Dialogue with stakeholders (§ 43): the Bank is in constant dialogue with NGOs and other public stakeholders on the implementation and evolution of its Public Disclosure Policy. It

³ For some projects the environmental due diligence would only be finalised after Board approval. This applies to two categories of projects: projects where completion of the EIA is a condition for disbursement by the Bank; and for projects which are finalised as a PPP (public-private partnership). The latter category of project will typically be appraised in two stages and the environmental due diligence might only be completed in the second stage (after Board approval).

also discusses its Public Disclosure Policy with peers in other EU institutions and bodies and IFIs to keep abreast of new developments.

- The undertaking that specific rules on public access to information contained in European Investment Fund (EIF) documents should be drawn up and published separately (§ 37) has been implemented by the EIF.
- Appeal mechanisms: The Bank published in July 2008 its Complaints Mechanism Policy, which formalises and strengthens the existing appeal procedures. This mechanism consists of a two-tier approach: the EIB Complaints Office and the European Ombudsman. The Bank and the European Ombudsman have also signed a Memorandum of Understanding which extends access to the external mechanism to non-EU citizens/residents.

Conclusions

Progress has been accomplished in most areas where unsatisfactory results had been identified in 2006. However, in a constant effort to improve procedures, further action is under way to implement improvements in the following areas:

- providing regular updates of environmental and social information in the project summaries in the Project List on the EIB website;
- allowing access to detailed project information from six months after signature until information on the project is published in the Annual Report. Currently, Project Summaries are only linked to the "Projects to be financed" list and are removed six months after signature;
- increased publication on the website of Topical Project Briefs on projects that elicit considerable public interest or concern;
- improved management of the special section on environmental information on the EIB website, in particular to ensure consistent timely (daily) updates of information.

In accordance with the requirement that the Public Disclosure Policy be reviewed formally every three years, a review will be conducted in 2009, including a full public consultation process. An initial announcement will be made before the end of 2008 on the EIB website.

Your comments

The Bank welcomes feedback from external stakeholders on the implementation and evolution of its Public Disclosure Policy. Comments can be submitted throughout the year via a dedicated mailbox on the EIB website (infopol@eib.org).
