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Warsaw/Krakow 17.11.2005

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WWF Poland, Polish Green Network and Polish Society for Protection of Birds welcome the EIB's public revision process of its information policy and are grateful to the EIB for providing the opportunity to comment on the second draft of the policy.

We note the EIB's strong commitment towards the presumption of disclosure and some transparency improvements like the routine disclosure of non-technical summaries of environmental impact reports. However, central elements of the proposed policy still fail to comply with the legal framework laid down in Regulation 1049/2001 of the European Parliament and of the Council and in Directive 2003/4 on the Aarhus Convention. Therefore, we must express our disappointment with the very limited advances the new Disclosure Policy makes in terms of the comments received by the EIB from the first round by our groups and others too.

Maximum disclosure of information

Paragraph 4 of the second draft policy refers to the presumption of disclosure of information. However, this principle is not followed by a clearly defined regime of exceptions, which seriously undermines the whole statement. Therefore, we recommend a review of the whole document, amending it with new formulations in line with the principle of maximum disclosure.

The following paragraphs are identified as problematic:

1. Paragraph 5 should refer to the clearly defined regime of exceptions, which is not the case now (please check with comments described in the regime of disclosure part).
2. Paragraph 27 should be deleted or amended with a new formulation reflecting provisions on the clearly defined regime of exceptions.
3. Paragraph 30 undermines the presumption of disclosure and should be deleted or amended with a new formulation reflecting provisions in the clearly defined regime of exceptions.

4. Proposed paragraph 39 with the non-exhaustive list of information categories undermines the concept of the presumption of information disclosure. In order to maintain policy coherence we strongly recommend deleting proposed point 39 and other related references to a non-exhaustive list of documents that cannot be released.
5. Paragraph 42 should be amended in order to make sure that all project-related documents will be disclosed upon request, subject to the reduction of commercially sensitive information based on the regime of exceptions.
6. Paragraph 46 should be removed or amended with the new proposal to ensure that all listed documents can be released – subject to protection through the list of exemptions.
7. Paragraph 53 on disclosure of the Board's agenda and minutes, including voting records, needs to be based only on the regime of exceptions described in the policy. However, the Board's agendas should be released at least two weeks prior to actual meetings.

Routine disclosure of information

The present policy draft includes a list of documents subject to routine disclosure; however it still remains very conservative. The EIB should routinely disclose in a timely manner all basic documents and all information relevant to the process of policy-making or project approval in line with the following recommendations:

8. Paragraph 33 should include description for public consultation process and ensure routine disclosure of draft policy-setting documents.
9. Paragraph 35: we recommend changing the formulation with this proposed text: "The Bank disseminates regularly a wide variety of information about its business operations. Some key project related information sources like Project Summaries, Environmental and Social analysis, its Activity Report, Annual Report, Evaluation Reports, press releases are subject to routine disclosure through the Bank's website and in electronic and hard copy version upon request. At the same time other project related information is provided on request with limits described by the regime of exceptions".
10. Paragraphs 36 and 37 should indicate clear timelines for the disclosure of Project Summaries for both public and private sector projects.
11. Paragraph 38 should be removed. It is especially unacceptable not to release information on projects with adverse environmental or social impact, as envisaged in paragraph 2. We recommend to remove this paragraph.
12. Paragraph 40 needs address the lack of name and contact data of the person responsible for the project in the content of Project Summary as well as ensure that information will be available on the Bank wesbsite even after six months period following signature. Name and contact data of the person responsible for the project should be in Project Summary.
13. Paragraph 41 should clearly define timeline and be applicable to the disclosure of full social and environmental analysis for high impact projects.
14. Paragraph 53 should be ammended with provisions for routine disclosure of Board's agendas at least two weeks prior to the actual meeting and disclosure of summaries of lending and policy discussions.

Regime of exceptions

The regime of exceptions laid down in Article 4 of Annex I is the most disappointing aspect of the new draft Policy. Proposed regime goes far beyond the provisions of Aarhus Convention or Regulation 1049/2001. We recommend to brought together in one place all exceptions (compare to commetns on maximum disclosure of information) and define them with clear and coherent statement of exceptions following the Council of Europe Recommendation:

1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:
 - i. national security, defence and international relations;
 - ii. public safety;
 - iii. the prevention, investigation and prosecution of criminal activities;
 - iv. privacy and other legitimate private interests;
 - v. commercial and other economic interests, be they private or public;
 - vi. the equality of parties concerning court proceedings;
 - vii. nature;
 - viii. inspection, control and supervision by public authorities;
 - ix. the economic, monetary and exchange rate policies of the state;
 - x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

15. Article 4 p. 1 (vii) in favour of professional secrecy should be removed from the Rules on Public Access to Documents.

16. Article 4(2) of the Rules in favour of internal documents should be substantially revised and list the specific harms which are sought to be avoided.

17. Article 4(3) of the Rules should be removed.

18. Article 4(5) of the Rules should be revised. Category "internal management powers" should be removed from the exceptions.

Yours sincerely,

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