

Proposed Revised EIB Public Information Policy

June 20, 2005

Following the announcement of the European Investment Bank (EIB) last year to review its Public Information Policy, the European Parliament has twice stated its strong interest to participate in this review and make sure that any new EIB information policy respects the requirements of the UNICE Aarhus Convention on public access to environmental information, public participation in decision-making, and access to justice in environmental matters.

In the EMAC report for 2003 of the European Investment Bank (February 2005) it is stated:

19. Warmly endorses the proposals on transparency adopted on 15 June 2004 by the Board of Directors; intends to participate actively in the consultation procedure envisaged in this report, in connection with the implementation of the UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention); stresses the importance of taking into account the requests made, in the course of this consultation procedure, by the institutions and the NGOs;

In the DEVE report on the impact of the lending activities of the European Community in developing countries (pending Plenary approval in July), it is stated:

- D. whereas the EIB is currently reviewing its policy on public access to information which must take account of requirements resulting from the application to European institutions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters,

As Rapporteurs of the EMAC and DEVE Reports on the EIB, and as interested MEPs we warmly welcome that the EIB, on 19 May 2005, has started this consultation process which will last for 45 days. However, we must note that the draft, on which the consultation is based, falls quite short of being a coherent policy outline.

We therefore opted to present an alternative draft for a EIB Public Information Policy that we will discuss in a Roundtable in the Parliament with EIB representatives on 29 June 2005, and will submit in our names as input to the consultation process.

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¹ This proposal was prepared by a group of Members of European Parliament as an input to the roundtable on the EIB Public Information Policy Review (Brussels, 29 June 2005) and as a comment submitted to the EIB in the frame of its public consultation process on the review of the EIB public information policy. The authors suggest to the EIB to consider this draft proposal which draws on existing practice at the EIB, EBRD and IFC in its entirety as a base for reviewing the EIB public information policy.

Proposed Revised EIB Public Information Policy

I. Introduction

Acknowledging that the public has a legitimate interest in all EIB activities, this revised Public Information Policy aims to support one of the EIB's key corporate objectives: to achieve the highest possible level of transparency of its activities and to communicate with all stakeholders about those activities more effectively and on a timely basis.

The principal tool for disseminating information to the public at large is the EIB website. All publicly available documentation concerning its activities, policies and projects is either posted or listed on its website, with paper versions available on request. The EIB is constantly seeking to fine-tune the features of its website to meet the specific needs of the public and all stakeholders. EIB welcomes comments from all stakeholders with a view to future development of its information policy. To promote this, a dedicated mailbox has been made available in the information policy section of the website (infopol@eib.org).

Standards of administrative conduct that the public is entitled to expect when requesting information or documents are published. The "Code of good administrative behaviour for the staff of the European Investment Bank in its relations with the Public" also includes procedures for complaints from members of the public to be addressed to the EIB's Secretary General as well as recalling citizens' rights to lodge complaints with the European Ombudsman.

II. Basic Principles

The first objective of the EIB's Public Information Policy is to provide as much information as possible on how it operates and what it does. EIB regards its Information Policy as an evolving and flexible process, subject to continuous evaluation and quality assessment. Relevant EU policies on transparency and public disclosure of information, especially EC Regulation 1049/2001, and other legislation - including treaties such as the Aarhus Convention, are the main pillars of the EIB's Information Policy.² EIB commits to respecting the tenor and aims of the Aarhus Convention within the context of the relevant EU legislation.

EIB commits to keeping its policy in step with best practice in the international multilateral banking sector. The policy takes account of EIB's status and mission as the financing institution of the European Union and its functioning as a bank.

² In this context, the second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that "the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen". Article 255 of the Treaty establishing the European Community (hereinafter "The Treaty") enshrines a right of access to European Parliament, Council and Commission documents. The European Parliament and the Council have adopted Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents, whose purpose is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access in accordance with Article 255 (2). A similar regulation to apply Aarhus Convention rules to EU institutions and bodies is currently being prepared. In this context the EIB has decided to revise its rules on public access to documents.

The EIB's Information Policy is founded on the following basic principles:

- A. *Transparency.*** The EIB is guided by the presumption that information concerning the EIB's operational activities will be made available to the public on a timely basis in the absence of a compelling reason for confidentiality. The EIB's Information Policy reflects its commitment to comply with EU policy initiatives on transparency and public disclosure of information as well as the principles and limits of the Regulation EC/1049/2001 on Public Access to European Parliament, Council and Commission documents.

EIB recognizes that openness helps to promote the EIB's and EU's goals in all of expanding Europe as well as in the many other countries in which it is involved in lending operations. The EIB notes that by providing information on a timely basis to economic decision-makers the EIB also helps to improve the stability and efficiency of markets, and promotes adherence with internationally-agreed standards. Furthermore, EIB acknowledges that providing timely information to the interested public, enables monitoring project implementation, leads to increased efficiency and reduces risk of corruption.

- B. *Compliance with EU Mandates.*** As a financial institution (FI) entrusted with EU and member state public monies to promote various EU goals both in Europe and many other regions and countries, the views and policies of the EU will be at the heart of policy design, strategic decision-making and choice of projects to finance, so as to ensure accountability to shareholders and their publics as well as to the European Parliament, the Court of Auditors, OLAF and other EU institutions. This will be true on both procedural and substantive grounds, covering EIB procedures as well as the nature and design of any projects being financed in whole or in part.

Among the most important EU mandates that will guide the EIB are those dealing with the environment, sustainable development, transparency and public access to information. EIB relies on the EU's policy-making and legislative bodies, making extensive use of policy-related documents, including country reports prepared by other EU institutions such as the European Commission. Similarly, EIB is bound to follow the policy positions of the European Union's political and legislative bodies on human rights, development and environmental issues in countries and regions in which EIB operates.

- C. *Willing to Listen, Receptive to Comment.*** Through its stated commitment to open communication, the EIB will demonstrate its willingness to listen to third parties, with the purpose of benefiting from their contributions to its work in fulfilling its mandates and missions. This does not diminish the EIB's ultimate responsibility to decide its own strategies and to choose its own operational activities. EIB's information policy is an evolving process, subject to continuous quality control under the direction of the EIB's Management Committee, and is adjusted accordingly. The EIB welcomes comments on its information policy from all stakeholders with a view to the policy's future development.
- D. *Using a Business Approach to Implement its Mandates.*** A business-sensitive partnership with sponsors is necessary to allay concerns about client confidentiality that could affect willingness to work with the EIB. This will implement the recommendations of the G-22 Working Group on Transparency and Accountability that IFIs establish, publicly announce, and periodically restate explicit and well-

articulated definitions of the areas in which confidentiality should apply and the criteria for applying it.

In applying this policy, the environmental policy and other relevant policies, the EIB will follow the Aarhus Convention, the general spirit, purpose and ultimate goals of which are subscribed to by the EIB in the implementation of its Environmental and Information Policies, along with other relevant international conventions.

In framing the Public Information Policy the EIB has established confidentiality as being foremost a matter of commercial and financial concern. Commercial and financial information will not be released in cases in which the client can provide compelling reasons as to how disclosure of the information would cause harm to his competitive position, except in cases where there is an overriding public interest. The EIB will establish clear lines of demarcation to distinguish information that it will put in the public domain from certain information related to its business dealings and clients, particularly in regard to operations in the private sector.

EIB takes into account European and national legal provisions on confidentiality, in particular Article 287 of the EC Treaty, Regulation EC/1049/2001 and currently in making regulation on application of Aarhus to EU institutions and bodies, as well as best practice in the international development banking sector. In this context, it respects the principle to avoid any harm to the commercial and financial interests of its customers, to preserve the effectiveness of its decision-making process and operations and to protect the privacy interests of individuals, while at the same time holding to its commitment to provide the widest possible range of information on a timely basis to the public and stakeholders.

The principles establishing these lines of demarcation aim to ensure an appropriate balance that will satisfy the EIB's stakeholders, comply with its mandates, and protect the interests of its business partners:

- The EIB will ensure that an atmosphere of mutual trust is maintained in all its business transactions. For this purpose the EIB will find ways to honour its commitment to protect the confidentiality of commercially or financially sensitive information in tandem with its publicly stated intent to provide the public early access to important details of all projects that can affect them or their environments;
- At the same time, the EIB will reassure other stakeholders that such protection of valuable business information will co-exist with the presumption of disclosure and will not be used to lessen accountability;
- Potential project partners of the EIB will be fully informed that cooperation with the EIB comes at the price of providing information to the public and interested stakeholders;
- As part of this revision of its Information Policy, the EIB will publish the definitions of the areas in which confidentiality is being applied and the criteria for applying it, and a logbook of all such usage will be maintained for review by the Board, the EU Ombudsman or other relevant persons and agencies.

III. Application of Principles to Practice

The EIB's Public Information Policy addresses four basic information categories:

- Information on policies, strategies and guidelines
- Project-specific information
- Evaluation of projects and policies
- Board agendas and decisions

Through the Annual Report and its publications programme, the EIB will continue to make available information about its organisation, its operational strategy and its assessment of the economic climate in its countries of operations, as well as reports on other aspects of its work programme, including details of Global Loan programs where funds are loaned through intermediaries. The EIB will inform the public and business community at large about its operational activities through press releases, including statements of the President and Management. The public release of speeches and statements by senior management contributes to the free flow of information on the EIB's policies and operations. These speeches will be posted on the EIB's Web site.

A. *Information on Policies, Strategies, and Guidelines*

1. ***Draft Policies.*** In the spirit of its willingness to listen and be receptive to comment, the EIB will release drafts of any policy before final approval by the Board of Directors. These drafts will be made public once they have been endorsed by the EIB's Management and will be posted on the EIB's Web site for a period of 60 calendar days, during which time the public will be invited to send comments to the EIB. In this regard, management will proactively stimulate stakeholders' interest in, and contributions to, the drafting process of these policies.

A summary of the stakeholders' comments together with the Management Response to the main issues raised during the consultation period and to the comments of all interested parties will be posted on the EIB Web site prior to the final approval of policies by the Board of Directors.

A schedule for preparing future revisions to the EIB policies will be posted on the EIB's Web site. The above consultation procedure does not cover any aspects of the EIB's financial policies.

Furthermore, the public will be notified of impending policy reviews in order to give concerned observers adequate advance warning of the comment period. To this end, efforts will be made by the EIB to draw up and update a mailing list for this notification process for the benefit of stakeholders without access to a Web site.

2. ***Final Policies.*** All policies approved by the Board of Directors following the consultation procedure mentioned in this section will be made publically available, in order to allow the public to learn about and comment on EIB's work.

- 3. *Translation of Policies into Local Languages.*** Statutory documents are available in all official EU languages. Availability of publications in EU languages and/or non EU languages is determined according to the EIB's operational objectives, with the majority of other publications available in English, French and German. For projects outside the EU, the EIB commits to making documents available in local languages whenever possible. The EIB – on a progressive basis – will translate the Public Information Policy, Codes of Good Conduct and Environmental Policy into the relevant official national language in countries where it has a significant involvement.

B. *Project-Related Documents*

- 1. *Project Information Document (PID).*** A PID³ will be prepared for each project, and all projects will be included in the list of projects in the pipeline posted on the EIB website. PIDs for both public and private sector projects will be released at least 60 days prior to consideration of the project by the Board of Directors, after passing Initial Review by the EIB's Management. PIDs will be updated in a timely way if material changes are made to the project. The Environmental Aspect section should include the stage of the EIA process (Environmental Impact Assessment) and the results of public consultation when it is conducted; should provide information outlining where it is possible to obtain EIA documents, including relevant Web links and a detailed list of other project-related technical documentation. The section on Social Impacts should outline the impacts of the proposed project on individuals and communities expected to be affected, including gender impacts if any, as well as measures considered for mitigating resettlement and compensation problems, as well as the strategy for soliciting public input.
- 2. *Environmental and Social Documentation.*** The EIB is committed to releasing environmental and social information on all projects that are likely to involve social or environmental impacts. For any project where an EIA is required, the EIB will release on its Website the EIA as soon as possible after it has been released locally by the project sponsor or no later than 120 days before Board approval. In general, the EIB will provide timely public access to all important documents about a particular project concerning adverse social and environmental impacts, and to helping ensure that civil society has timely access to documents about projects, including economic benefit analysis and social and environmental impact analyses, prior to a decision by the Board.
- 3. *Public Sector and Private Sector Project Reports.*** The final report leading to approval of all public sector and private sector projects will be made available to the

³ PIDs for public and private sector projects shall include (i) the project title; (ii) sector, thematic, and targeting classification; (iii) project/program number; (iv) type or mode of assistance; (v) location and geographical coverage; (vi) description; (vii) objectives and scope; (viii) cost and financing plan (for public sector projects only); (ix) implementing agency or project sponsor(s); (x) allocated environmental and social safeguard screening categories; (xi) summary of environmental and social issues; (xii) country context; (xiii) consultations carried out or planned; (xiv) responsible department, division, and officer; (xv) the date of PID preparation and most recent update; (xvi) list of feasibility and technical documents prepared or scheduled to be prepared; and (xvii) a timetable for assistance design, processing, and implementation, including estimated dates for appraisal authorization and Board consideration. As the PID is a work in progress, information contained in items (viii), (x), (xi), (xiii), and (xvi) may not be included when the initial PID is made publicly available. These will be included as such information becomes available.

public on the EIB Website, at the point it is sent to the Board of Directors for approval. Any information that falls within the definition of confidentiality set out herein will be removed from the released documents.

- 4. *Global Loans.*** Deliberative processes for the approval of Global Loans will be fully considered as pipeline projects and, hence, be disclosed as are other projects. Information must include the implementing agency, general conditions and conditionalities attached to the Global Loan as well as the agencies' sectoral spending priorities. Possible environmental and social impacts of Global Loans should be addressed in the information disclosed. Intermediary banks receiving Global Loans will be obliged to follow the EIB information policy in this respect. While intermediary banks are not requested to publicly list the final beneficiaries of a particular Global Loan, they shall produce such a list upon specific request.

The EIB will publish aggregate data about projects financed through Global Loans on the Website on an annual basis.

C. Project and Sector Evaluation Documents

The EIB will release and post on the EIB's Web site reports prepared to evaluate projects at any stage.⁴ The EIB will release and post on the EIB's Web site evaluation reports prepared regarding all projects whether public or private, groups of projects, or policies, excluding any information therein which falls within the definition of confidentiality set out herein.

D. Board Agendas and Discussions

The EIB will collate in a dedicated Web site location the agenda and work programme for Board discussions of policies and projects, including the envisaged Board date for project approval. The schedule will be updated on a monthly basis. While intended to indicate the programme of Board activities, precise scheduling of individual items can change. Final agendas of Board meetings will be archived on the Web site.

EIB will release – subject to clearance in respect of commercial confidentiality – Board minutes and record of voting by the Board members.

IV. Enforcement and Evaluation of the Information Policy

The ultimate success of the EIB's Public Information Policy will be in its proper implementation. To this end, an essential element of the Policy is to ensure compliance, through internal accountability and an ongoing monitoring process, including external monitoring through the European institutions, and in particular the European Parliament. This will be achieved in the following ways:

- Management will report to the Board on implementation of the Policy on an annual basis and the findings thereon will be made public on the EIB's Web site, and Members of the Board will oversee and verify compliance with the Policy, and its reports will also be publicly available on the Web site.
- The Policy will be subject to review on a three-year cycle, especially in regard to such matters as the definition of confidentiality. Such reviews will be posted on the EIB's

⁴ Promoter of private sector projects will be notified prior to the publication of reports in order to enable requests to withhold certain commercial or financial aspects of the report, if compelling reason is provided that disclosure would inflict harm to the competitive interests of the promoter

Web site in advance and public comments solicited.

- In regard to such matters as the release of PIDs in the case of private sector projects, especially in regard to sponsor confidentiality and business sensitivity, derogations may be authorised by Management. The Board of Directors will be notified in each such case.
- Failing a reply within the deadline prescribed in Article 13 of the Code of Good Administrative Behaviour or in the event of a total or partial refusal following a complaint, the applicant is free to contact the European Ombudsman in accordance with Article 195 of the Treaty.

The EIB acknowledges the particular responsibility of the European Parliament to monitor policy coherence among the European institutions with regard to the spirit and letter of the Aarhus Convention. The EIB will make all efforts to inform the European Parliament about the implementation of its public information policy, in order to facilitate European Parliament's yearly reporting and tri-annual evaluation of the implementation of the EIB's public information policy.

V. The EIB's Outreach and Relations with Civil Society Organizations (CSO)

Management will communicate regularly with CSOs and other stakeholders, and will establish a dedicated contact point for this purpose. The EIB endeavours to respond to requests for information on any aspects of the EIB's work consistent with the principles of confidentiality and after consultations with other relevant parties. Contact information and details are provided on the EIB's Web site.

VI. Confidential Information

The EIB's Public Information Policy is based on the presumption that information concerning the EIB's operational activities will be made available to the public in the absence of a compelling reason for confidentiality. For the reasons stated below, certain categories of documents or portions of documents may not be released.

In general, confidential information with regard to industrial trade secrets, and commercial or financial information will not be released if the person from whom the information was obtained delivers compelling reasons on why disclosure of the information is likely to cause harm to his competitive position, except in cases of an overriding public interest

Confidential information tentatively also includes documents intended for internal purposes only, privileged information such as legal advice and correspondence with external legal advisers; information that, if disclosed, could violate the law, or prove a threat to the national security of a member country; and information on which the originator has delivered compelling reasons on why disclosure of the information is likely to cause harm to his competitive position. In these cases, documents will be disclosed with the confidential information redacted.

Information related to procurement processes, tenders, proposals or price quotations, or records of deliberative processes; financial, business or proprietary information of private entities received by the EIB in the analysis or negotiation of loans, will not be released unless permission is given by those private entities, except in cases of an overriding public interest..

In its continuous efforts to innovate, learn and search for new ideas, the EIB is willing to

listen to the views of external stakeholders about how the policy on confidentiality is being defined and applied.

VII. Applications for Access to Documents

1. In giving access to information and documents, EIB applies the principle of equal treatment towards both individual citizens and legal persons. Applications for access may be made in any written form, including electronic form. They shall be addressed to:

General Secretariat
Information and Communications Department
European Investment Bank
L-2950 Luxembourg

or to: infopol@eib.org or infopol@bei.org.

or to any staff person of the EIB responsible for a particular sector or project relevant for the request.

2. Applications for access shall be processed in accordance with the conditions and deadlines laid down in the Code of Good Administrative Behaviour.

3. The applicant shall not be obliged to state reasons for the application. If any application is not sufficiently precise or if it does not enable the document or information sought to be identified, the EIB shall ask the applicant to clarify the application.

4. The applicant shall have access to documents by receiving a copy (electronic form where available or hard copy sent by post) or otherwise by consulting them on the spot.

5. Documents shall be supplied in an existing version and format.

6. If a document has already been released, either by the EIB or by a third party, the EIB shall reply to the application for access by informing the applicant how to obtain the requested document.

7. An applicant may be charged a reasonable fee to cover the costs arising from the reproducing and mailing of documents requested, but in general requests from non-commercial entities or civil society organizations or individuals shall not incur such charges.

8. The public documents of the EIB can be freely reproduced, if:

- the source and the date of publication are mentioned
- the information concerned is not modified
- the information is not used for commercial purposes (which would require EIB approval)
- the rights of third parties, namely in the field of copyright, are respected.

VIII. Definitions

1. Members of the public shall have access to the documents of the EIB in accordance with the principles, on the conditions and within the limits laid down in this Policy.

2. “Member of the public” shall mean any citizen of the Union or any natural or legal person residing or having its statutory registered office in a Member State of the European Union, as well any citizen or any natural or legal person residing in a State in which the EIB conducts

activities, including providing finance for projects.

3. “Document” shall mean any content drawn up or received by the EIB concerning a matter relating to policies, activities, projects or decisions falling within its spheres of responsibility.

4. “Third party” shall mean any natural or legal person or any entity outside the EIB, including the Member States, other Community or non-Community institutions and bodies and third countries.