

Preliminary findings on how the European Investment Bank discloses environmental information about projects it finances through intermediaries

Correspondence - 08/06/2021

Case 1251/2020/PB - **Opened on** 27/07/2020 - **Decision on** 21/04/2022 - **Institution concerned** European Investment Bank (No further inquiries justified) |

Context

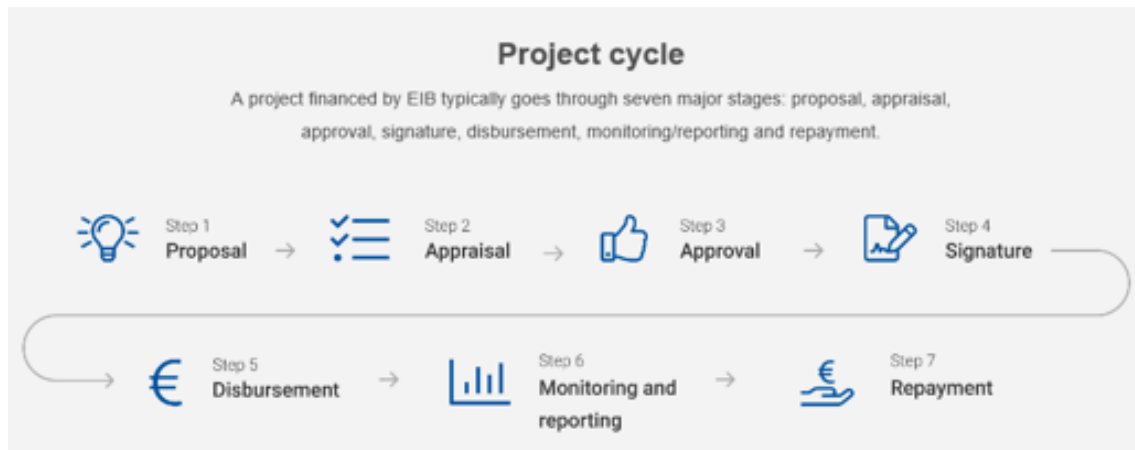
1. Owned by the EU Member States of the EU, the EIB is “ *the EU's long-term lending institution* ” [1] . The EIB's lending capacity for 2021 is approximately EUR 70 billion .

2. Every year, the EIB provides direct loans for a wide range of projects. They are thus in charge of one of several fields of activities through which the EU provides financial support for the maintenance and development of economic and social activities. The EIB is not the project promoter. It does not run/manage the projects, nor does it issue the related public authorisations. It provides only part of the financing.

3. The EIB provides loans ‘indirectly’ through **intermediaries** , the subject of this inquiry. In these cases, the EIB provides loans to financial institutions (which are, for the most part, other banks) that subsequently “on-lend” to final project promoters or beneficiaries.

4. The EIB provides its loans using a decision-making procedure that includes steps and phases that are common to most procedures aimed at the disbursement of public money. Several elements of this procedure are illustrated in what it is referred to as the ‘project cycle’.

[2]



5. Like other public bodies, the EIB has had to develop specific procedural steps and concepts that are unique to its field of work. Because the EIB provides financial support through loans - rather than for instance through grants or subsidies - some of its working methods resemble those of the banking sector, notably its provision of 'credit lines' when its financing is done through financial intermediaries' [3] .

6. The public character of the EIB implies that it has a particularly strong focus on public interest objectives. A topical and visible example of this is its 2019 climate strategy [4] .

7. The EIB has stated its strong commitment to the values of transparency [5] , corporate responsibility [6] , and stakeholder engagement [7] . It emphasises that the practical implementation of such values is not simply an additional procedural layer, but contributes to the substantive quality of its financing activities (" *We firmly believe that transparency contributes to the quality and sustainability of the projects we finance and helps to build trust in the EU bank* "; " *We firmly believe that stakeholder engagement conducted throughout the project cycle enhances our positive impact on the ground.* ")

8. The EIB's implementation of those values and methods is regularly scrutinised by other public bodies (for instance the European Parliament [8]), civil society, or by citizens who turn to the dedicated Complaint Mechanism that the EIB created in 2009 [9] .

9. The standards that apply to the implementation of such values and methods are found in policies formulated by the EIB itself, as well as in EU Treaties and in legislation that give effect to generally applicable principles of good administration and good governance.

10. One such piece of EU legislation [10] is based on the **UN Aarhus Convention** [11] which obliges, among other things, public authorities actively and systematically to publish 'environmental information', which includes not only information *about* the state of the environment, but also information about activities that have a significant impact on the environment.



11. The complainants invoke this EU legislation to support their view that the EIB's lending activities should be more transparent regarding the initial decision-making and the monitoring/reporting.

Inquiry steps to date

12. The Ombudsman's inquiry team held a meeting with all the EIB's relevant services in October 2020 [12] , and obtained a number of documents and information both before and after the meeting.

13. The Ombudsman then invited the complainants to comment on the content of the report. They did so in January 2021.

14. Whilst the background to the inquiry includes facts that were examined in a report by the EIB's complaint Mechanism [13] , the Ombudsman's focus is on the points of principle that the complainants have raised.

The complainants' concerns and claims

15. The complainants are concerned about what they consider to be a lack of respect for certain specific rules, and criticise more generally an approach that they describe as "hands-off" and "black-box". They see this as manifesting itself in several ways.

16. The EIB, they claim, appears to consider that intermediaries can be trusted to respect the contractual clauses related to the environment, and that the bank has few obligations to check this, systematically and actively.

17. The EIB, they further claim, appears to suggest that, when the projects are within the remit of EU law or related national legislation, it is up to other control bodies to take care of enforcement. The complainants consider that, in addition to this being an example of a "hands-off" approach, it is not valid in respect of projects in countries where EU legislation does not directly apply. In those cases, it is even more important that the EIB takes a key role in ensuring compliance with the applicable EU standards and objectives.

18. The complainants insist that the EIB's approach runs deeper than a mere unwillingness to *make public* environmental information on projects that have a significant impact on the environment. They say that the EIB in many cases does not even hold such information. They claim that this raises questions about the EIB's commitment and to its practical ability to ensure that projects comply with the applicable EU Treaty objectives, including environmental standards specifically.

19. The complainants state that an internal EIB report from 2018 identified serious shortcomings in the EIB's collection of information on the nature of projects and their compliance with relevant



objectives. This led the European Parliament to call for improvements and the EIB subsequently committed to provide an improved annual information update to Member States. However, the scope and quality of this information is not yet clear, and related improvements were not introduced for the purpose of regularly providing information to the public.

20. The complainants note that the EIB is more involved in a limited number of projects that exceed a certain threshold (EUR 25 million). In these cases, it requests and holds a significant amount of the project related 'environmental information' (if any). However, the EIB does not appear actively to publish the environmental information that it collects for such projects.

21. The complainants say that the EIB's practices are inconsistent with its general commitment to take into account external reporting on possible irregularities in projects. They ask how they or other dedicated environmental organisations can report on such possible irregularities if the EIB does not provide adequate information to allow them to fulfil that role.

22. The complainants also consider that it is unclear as to why the EIB does not simply oblige the intermediaries to earmark projects with a significant impact on the environment, and to collect and publish the related environmental information. The complainants take the view that there should be no obstacles - legal or otherwise - to the EIB introducing such requirements in its contracts with the intermediaries.

23. The complainants also point to existing information-gathering systems that, to their understanding, could simply be adapted to capture EIB-financed projects that have a significant impact on the environment. They point out that the EIB already uses certain established EU codes [14] to place projects in different categories. The EIB therefore already collects basic information about each project, and it could extend this to record whether a project has significant impact on the environment.

24. As a result, the CSOs and other members of the public are prevented from identifying and reporting on irregularities in projects that the EIB finances through intermediaries, be it technical/environmental errors or even non-compliance with EU Treaty objectives.

25. The complainants make the following related claims:

a. The EIB should amend the contractual clauses on environmental matters with intermediaries so that there are clear requirements as to what environmental information must be collected by the financial intermediary and passed on to the EIB for publication.

b. The EIB should collect environmental information in relation to all the projects that the EIB finances through intermediaries (and which have a significant impact on the environment) and publish this information as soon as it receives it, including specific documents containing such information [15] .

26. In the complainants' view, "[u]ntil the EIB publishes this information, it should at least indicate whenever it has received such information in relation to projects financed by



intermediaries and identify the specific documents it holds. ”

27. The complainants also call on the EIB to publish the EIB's up-to-date allocation list of final project promoters or beneficiaries of intermediary finance operations.

Preliminary observations

The issue in the inquiry is the active disclosure of environmental information

28. The Ombudsman notes the complainants' point that the current circumstances may actually prevent the public from knowing whether projects financed through intermediaries are, or may be, contrary to EU Treaty objectives. The importance of transparency in this regard is apparent, and forms part of the background to the Ombudsman's assessment.

29. This inquiry is focused on the recording and publication of 'environmental information'. Questions as to whether the EIB's financing operations substantively comply with EU Treaty objectives are currently not part of this assessment.

30. The Ombudsman notes that that technological and related administrative efforts increasingly expected in the field of environmental information management are extensive and complex [16]

31. The Ombudsman notes that achieving a lasting systemic and positive impact can best be effected through an assessment that produces practical and sustainable solutions. The Ombudsman can do this by identifying basic principles, rather than specific rules and practices that may frequently change.

Assessment

Standard approach for larger projects

32. In intermediate financing, the EIB is often involved in the approval and monitoring of projects of a certain size. When this is the case, the EIB holds important environmental information related to the projects in question.

33. The Ombudsman is not aware that, in relation to documents for its intermediate financing, the EIB aims at a lower degree of transparency than in relation to its direct financing.

34. Therefore, taking into account the Aarhus Convention and the findings in case 1065/2020/PB on direct financing, the Ombudsman makes certain **suggestions** below for



larger projects (above EUR 25 million) [17] .

Balanced approach for smaller projects

35. The complainants are making a far-reaching request: The EIB should oblige intermediaries to collect and pass on to the EIB all the relevant ‘environmental information’, which the EIB should then centrally process and systematically publish online.

36. It is far-reaching not only because of the administrative burden for the EIB, but also because it suggests that a highly centralised approach is the appropriate solution.

37. The EIB, on the other hand, takes an approach that appears to be somewhat technocratic: The EIB does not have a contract with the end-project promoters or beneficiaries, so the intermediary is responsible. The intermediary has normally signed a contract according to which it will respect certain relatively broadly formulated contractual obligations related to the environment. The EIB appears to take the view that the existence alone of such contractual obligations ensures that the relevant standards will be respected.

38. This approach appears technocratic because it relies on a formal view of the issues involved, to the extent of suggesting that intermediate financing necessarily and legitimately involves a high degree of outsourcing not only of work, but also of responsibilities.

39. The Ombudsman is not convinced that the proposed approach of the complainants or the current approach of the EIB is necessarily correct.

40. The Ombudsman understands the frustration of the complainants with what they see as a “black box” of information in a field in which they are trying to do work of public interest. However, a focus on the intermediaries, rather than the EIB directly, would seem to be more beneficial to their aims.

41. The integration of EU principles and law into the daily work of both public and private actors is an ongoing task. In the context of this case, it implies integrating environmental awareness, expertise and management at those levels, including information management. In addition, the EU has a basic ‘polluter pays’ principle and so it appears to be perfectly consistent and reasonable to place certain additional relevant obligations on financial intermediaries. To that end, a number of reasonably straightforward technological options are available to strike an appropriate balance.

42. The EIB has, in the past, made observations based on certain assumptions: The existence alone of certain contractual provisions ensures the compliance with the standards in question, or, specifically for projects within the EU, “ *the EIB assumes that EU environmental and social laws ha [ve] been correctly transposed into national law and that national law is being enforced by the responsible authorities* ” [18] . It has also observed that it, the EIB, may check whether the financial intermediaries in practice respect their contractual obligations.



43. The Ombudsman notes that these assumptions have led to a practice whereby the EIB does not systematically make itself adequately aware of the projects that it finances and which have a significant impact on the environment.

44. It is unlikely that this lack of information concerns the complexity or the amount of work involved. In the two biggest EU Member States, France and Germany, the number of financial intermediaries are ten and sixteen respectively; in Sweden it is two. In India, the number is three [19] . To the extent that the intermediaries have obligations to publish environmental information, this would presumably be readily available on their websites.

45. With regard specifically to the EIB's presumption that, within the EU, there is no need either to impose particularly precise contractual obligations, or carry out related controls, the Ombudsman cautions against simplified perceptions of the state of the rule of law within the EU. For instance, the annual corruption perception index of *Transparency International* places several EU Member States quite low, with some of them even lagging behind so-called developing countries [20] .

46. More importantly, however, is the fact that the EU public administration generally does not work with the above-mentioned assumptions. The relevant parts of the EU administration, whether they have control-tasks as such or simply have public interests to protect (financial or otherwise), all play an active role to ensure compliance with the applicable laws in question. Moreover such efforts are openly pursued in collaboration with members of the public, and there is no reputational problem in admitting to a certain dependency on the reporting from individual citizens, commercial entities, civil society and so forth. The latter possibility requires, however, that the public has access to the information needed to fulfil such a role.

47. Therefore the Ombudsman makes the below **suggestions** for a balanced approach to transparency for smaller projects (below EUR 25 million) [21] .

Allocation list of final project promoters and beneficiaries

48. The complainants also call for the EIB to publish the EIB's up-to-date allocation list of final project promoters and beneficiaries of intermediary finance operations.

49. The Ombudsman understands from the meeting with the EIB that there are no data or information repositories that contain all projects that are financed through intermediaries, as there are often 'batches' of credits (credit lines) that are used by intermediaries for very minor needs and projects. Moreover, if the allocation list referred to by the complainant is a list that has not been examined and filtered for confidential information, it is not clear how the immediate online publication of such a list can be made possible.

50. The Ombudsman nonetheless asks the EIB to respond to this claim, and to clarify to what extent the publication of such a list would for instance fit in with the EIB's existing practices of



providing early information on projects that are to be financed through its direct financing operations [22] .

Suggestions

1. Standard approach to larger projects

- a. Whenever the EIB holds factual ‘environmental information’ related to projects that it finances through intermediate financing, it could publish that information on the related project page on its website.
- b. The information should as far as possible be presented *contextually* , and therefore published through source documents that contain facts, factual findings and any related technical/economic assumptions and calculations.
- c. The EIB could take a *document-transparency by design* approach to facilitate such publication, including the introduction of related information and document obligations for financial intermediaries (including, as needed, information templates, forms or similar, for the timely and non-confidential transfer to, and subsequent publication by, the EIB).

2. Balanced approach for smaller projects

- a. The EIB could contractually oblige its intermediaries to publish ‘environmental information’ - as understood under the Aarhus rules and explained in the Guide on the Aarhus Convention - whenever they use EIB funds to finance projects that have a significant impact on the environment.
- b. The EIB could contractually oblige its intermediaries to provide the EIB with the name, place and nature of any project that has a significant impact on the environment as soon as the financing decision has been taken. The EIB could then immediately publish this information on its existing online project page.

3. Related practical suggestions

- a. The EIB could make sure, contractually and through training sessions, and follow-up audits or controls, that intermediaries respond adequately to requests that members of the public make for access to environmental information, and that the public is informed of a possibility of complaining to the EIB if this is not done [23] .
- b. The EIB could in terms of definitions, interpretations and classifications remain within



the framework of the body of reviews and guidelines that has evolved in relation to the Aarhus rules, and not introduce or apply new or other classifications to determine whether projects should be earmarked as having a significant impact on the environment.

c. If, for whatever reasons, the imposition of the standards under the Aarhus rules would be clearly inappropriate and would risk being counterproductive, and the EIB thus decides to impose other standards, the EIB should make public the reasons for this choice.

d. The EIB could include a dedicated section on transparency on intermediated financing in its annual transparency report.

The EIB is invited to respond to the above suggestions by the end of September 2021.

Emily O'Reilly European Ombudsman

Strasbourg, 08/06/2021

[1] https://www.eib.org/en/investor_relations/overview/index.htm

[2] This illustration is for instance contained in this EIB report:

<http://reports.eib.org/eib-group-sustainability-report-2017/responsible-guidance> [Link]

Information specifically on appraisals is provided here:

<https://www.eib.org/en/projects/cycle/appraisal/index.htm> [Link]

Information specifically on monitoring is provided here:

<https://www.eib.org/en/projects/cycle/monitoring/index.htm> [Link]

[3] More on this here:

https://www.eib.org/attachments/country/acp_fs_lines_of_credit_to_financial_intermediaries_en.pdf
[Link]

[4]

<https://www.eib.org/en/press/all/2019-313-eu-bank-launches-ambitious-new-climate-strategy-and-energy-lending-policy>
[Link]



[5] <https://www.eib.org/en/about/partners/cso/access-information-transparency/index.htm> [Link]

[6] <https://www.eib.org/en/about/cr/index.htm> [Link]

[7] <https://www.eib.org/en/about/partners/cso/index.htm> [Link]

[8] See for instance 'Role of the European Parliament' at the end this fact-sheet:

<https://www.europarl.europa.eu/factsheets/en/sheet/17/the-european-investment-bank> [Link],
and related information by the EIB itself:

<https://www.eib.org/en/press/news/european-parliament-reports-on-eib-annual-activities> [Link]

[9] <https://www.eib.org/en/about/accountability/complaints/index.htm> [Link]

See also, in this regard, the Ombudsman's *Memorandum of Understanding* with the EIB
available at:

<https://www.eib.org/en/publications/memorandum-of-understanding-between-the-eo-and-the-eib>
[Link]

[10] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6
September 2006 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, <http://data.europa.eu/eli/reg/2006/1367/oj> [Link]

[11] <https://unece.org/environment-policy/public-participation/aarhus-convention/text> [Link]

[12] A full on-site inspection-meeting had been planned, but had to be cancelled due to the
Covid19 situation.

[13] <https://www.eib.org/en/about/accountability/complaints/cases/eib-intermediated-lending>
[Link]

[14] 'NACE' codes - 'nomenclature statistique des activités économiques dans la Communauté
européenne', a statistical classification of economic activities in the EU

[15] The CSOs mentioned for instance environmental impact assessments, environmental and
social impact assessments, various declaration forms for sites of natural conservation, various
other related reports, assessments, reviews, including reports/assessments commissioned by
the EIB from third parties.

[16] See for instance "Draft updated Recommendations on the more effective use of electronic
information tools, Seventh meeting (Geneva 2020), Meeting of the Parties to the Convention on
Access to Information, Public Participation in Decision-making and Access to Justice in
Environmental Matters (<https://unece.org/env/pp/tfai/consultation-recommendations-eit> [Link]),



[17] See also

[18] Report of the EIB's Complaints Mechanism:

<https://www.eib.org/en/about/accountability/complaints/cases/eib-intermediated-lending>

[19] <https://www.eib.org/intermediarieslist/> [Link]

[20]

https://images.transparencycdn.org/images/CPI2020_Report_EN_0802-WEB-1_2021-02-08-103053.pdf

[Link] (pp 2 and 3).

[21] These suggestions are made in light of good governance, principles of good administration and the EIB's stated aspirations in those regards, and not made on the basis of a finding of a breach of existing legal rules. The specialised and highest authorities for interpreting the Aarhus rules include first of all the Aarhus Convention Compliance Committee and, for the implementing EU rules, the European Court of Justice.

[22] The EIB is invited to for instance explain how it considers the CSOs' suggestion in light of recent and on-going work on an EU taxonomy

(e.g.

https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190618-sustaina

[Link])

[23] Cf. the similar recommendations made by the EIB complaints Mechanism in its above-mentioned report.