

## **Decision on how the European Investment Bank discloses environmental information in relation to projects that it finances directly (case 1065/2020/PB)**

Decision

**Case 1065/2020/PB - Opened on 27/07/2020 - Decision on 21/04/2022 - Institution concerned** European Investment Bank ( No further inquiries justified ) |

The case concerned the European Investment Bank's (EIB) practice regarding the publication of environmental information for projects that it finances directly. The complainants, three civil society organisations, were concerned that, by publishing too little environmental information about these projects and too late in the process, the EIB prevents the public from fully expressing its views on environmental issues before the EIB takes its decision to finance projects.

The obligation to publish environmental information originates in the Aarhus Convention, an international convention that ensures access to information, public participation in decision making and access to justice in environmental matters. It binds the EU, its institutions and the signatory states. The Ombudsman found that the far-reaching objectives underpinning the Aarhus legislation required a more ambitious approach on the part of the EIB to its disclosure practices. She made a series of suggestions to this effect.

The EIB agreed to implement some of the suggestions. It rejected others on grounds that the Ombudsman considered reasonable. For some of the suggestions to which the EIB did not agree, the Ombudsman continues to believe that it would be in the public interest for the EIB to implement these changes. As such, she reiterates those suggestions in this decision.

While the inquiry was ongoing, the EIB revised its internal transparency rules and other related practices. The Ombudsman also made changes to how she will deal, in future, with transparency-related complaints against the EIB. These changes may give effect to some further suggestions made by the Ombudsman and this will be determined on the basis of future complaints.

The Ombudsman therefore closed the case on the basis that further inquiries would not be justified at this point in time. She invites the EIB to reply within six months to the suggestions for improvement listed at the end of the decision.



## Introduction

1. Three civil society organisations complained to the European Ombudsman that the EIB does not fully respect its obligation to publish 'environmental information' for projects that it finances directly.
2. The obligation to publish 'environmental information' originates in the Aarhus Convention [1] , an international convention that binds the EU, its institutions and the signatory states. The obligation implies, in short, that public institutions publish certain 'environmental information' whenever the activity in question has a significant impact on the environment.
3. The obligation to *publish*, systematically and actively, environmental information is one of two main transparency aspects of the Aarhus legislation [2] . The other is an obligation to *disclose* environmental information when someone requests it.
4. Giving effect to these transparency obligations is essential to make the overall system of the Aarhus legislation work. The Aarhus legislation contains two additional features: public **participation** in decision-making related to activities that have a significant impact on the environment, and the public's right to seek administrative and judicial **remedies** in relation to such activities.
5. The EIB publishes information online about projects it finances. The online summaries of these projects include environmental and social information [3] .
6. The complainants consider that the EIB publishes too little 'environmental information' and that it does so too late in the process. They argued in particular that the EIB's current approach does not allow the public to have an impact on the EIB's decision making in relation to specific projects that it finances. In other words, they cannot effectively exercise their key rights under the Aarhus legislation, namely to participate in decision-making and to seek judicial remedies.
7. The complainants expressed this concern in relation to the early stage when the EIB decides whether to finance a project or not, as well as with regard to the EIB's monitoring of whether the project promoters (those who implement projects that are co-financed by the EIB) comply with their obligations related to the environment.

## The inquiry and this decision

8. In the context of the inquiry, the Ombudsman issued a preliminary assessment [4] with suggestions in June 2021. The EIB sent a detailed reply to the Ombudsman in November 2021 and the complainants submitted comments on that reply.
9. This decision assesses the EIB's response to the Ombudsman's suggestions. Some were accepted by the EIB, some were rejected on grounds the Ombudsman found reasonable, while



some have had to be restated. For the remaining suggestions, the following developments are relevant.

**10.** The EIB has recently revised its administrative rules on transparency practices [5] and has also implemented a major revision of its environmental and social framework [6]. The impact of these revisions on the transparency of the EIB's operations cannot yet be assessed. The Ombudsman will have occasion to do so on the basis of future complaints.

**11.** The Ombudsman has moreover revised the approach to complaints against the EIB's refusals to grant public access to its documents. Applicants may now turn to the Ombudsman immediately after a negative decision on a request for review ('confirmatory application') [7].

**12.** The issue of transparency of environmental information has moreover been included in the Ombudsman's current strategic work, and is intended to include the commissioning of an independent study on best practices for publication of environmental information by international financing institutes, as well as exchanges with international expert bodies in the field.

## **Systematic online publication of documents containing factual information on projects**

**13.** The final stages in the EIB's project approval process are part of the EIB's internal decision making process. As such, the EIB is justified in withholding certain information, for example relating to internal opinions, views or discussions on conflicting priorities ('deliberative content').

**14.** The EIB should, however, take additional steps to publish, as early as possible, as much factual information as possible on projects that its services examine for possible financing.

**15.** The Ombudsman acknowledged the EIB's efforts meticulously to extract, summarise and publish 'environmental information' from its project documentation. She encouraged the EIB to continue doing so. However, in addition to expressing concern as to whether all environmental information is actually published in such summaries, the Ombudsman noted that 'environmental information' is better understood if read in context. The Ombudsman therefore suggested that the EIB take practical steps to ensure that the documentation that is currently not published, and which contains 'environmental information' - including the EIB's internal documents related to and emanating from its due diligence assessment - be structured in such a way that the documentation can be rapidly published, including prior to the final decision on the EIB's financing of a given project [8]. This would entail some restructuring of the standard documentation but, in most cases, separating 'deliberative content' from factual information about projects should be straightforward. The EIB could request project partners to submit documents in a format and structure that facilitates such separation.

**16.** The EIB replied that, in its view, its current approach suffices.

**17.** The Ombudsman regrets that the EIB did not agree to restructure its documentation



containing environmental information (including its internal due diligence documentation). Doing so would, among other things, better allow for timely publication, that is prior to the approval decision, of all non-confidential factual information concerning projects considered for financing. Implementing this suggestion would allow the public to understand better what information the EIB considers important for its financing decisions.

18. The Ombudsman intends to revisit this issue in the future, in the context of possible future monitoring of the EIB's updated transparency rules and environmental and social framework. The Ombudsman is moreover establishing contacts with the *Compliance Committee* set up under the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters [9] to exchange further on these matters.

## **Publication of a list of documents containing environmental information**

19. The Ombudsman made the following suggestion that was in some parts related to the one referred to above:

The EIB's online summaries related to projects are compiled from source documents. The Ombudsman suggests that the online summaries systematically include an annex with a comprehensive and up-to-date list of those source documents. When some of those source documents are available online - be it through active publication by the EIB itself or other public bodies or project promoters - the online link should be provided.

20. The EIB draws up online summaries that contain environmental information. It does so on the basis of external and internal documents [10]. The references or titles of those documents could be listed. Such a list could usefully be published together with the summaries and updated during the course of the project.

21. This would allow the public to identify the most relevant documents for any public access requests that they would want to submit to the EIB.

22. As the EIB did not address this suggestion in substance, the Ombudsman invites it to consider this suggestion again.

23. The Ombudsman is not aware of objections the EIB might have to providing a public list of references (titles and dates) of the documents from which it extracts and summarises 'environmental information', including the documents related to, or produced as part of, its due diligence assessment of projects. Whereas the *content* of documents can by way of exception be subject to confidentiality, their *existence* as such is not normally confidential. The Ombudsman considers that it would also be in the interest of the EIB to make available lists of the documents from which it extracts and summarises 'environmental information', including the documents related to, or produced as part of, its due diligence assessment of projects. Such lists would contain only basic information on the existence of the documents (titles and dates).



While it may not be possible to grant public access to all of the documents (depending on their content), the *existence* of the documents as such should not be confidential, under normal circumstances.

24. The Ombudsman therefore re-states this suggestion below.

## **Publication of monitoring reports**

25. The Ombudsman made this suggestion:

For projects that have a significant impact on the environment, the EIB should use 'document transparency by design' in order to actively and rapidly publish its monitoring reports to allow the public to inform itself about the content in time for concerns to be expressed and, when valid, to be taken into account for the EIB's final compliance assessment.

26. The EIB replied that its current practices suffice.

27. The Ombudsman emphasises that the Aarhus Regulation aims to provide transparency about environmental information with a view to enabling the public to influence ongoing activities or policies. Publishing monitoring reports, notably compliance assessments, in a timely manner would enable the public to raise potential concerns that could be taken into account for the EIB's final compliance assessment.

28. The Ombudsman takes note of the EIB's position that no systematic changes are required because its current practices are felt to be adequate. However, for the reasons set out above, she considers that, by failing to publish its monitoring reports, the EIB is not living up to the ambitious transparency objectives it has set itself. The Ombudsman's view is that this matter can most likely be better pursued in future project-specific inquiries.

## **Providing a timeline for projects online**

29. The Ombudsman made this suggestion:

Since the EIB's online project pages relate to a well-defined and well-managed project cycle that contains main steps/events, the Ombudsman suggests that the EIB copies the good practice of, for instance, its Complaints Mechanism and systematically include an updated time-line workflow that shows at what stage a project is. This could usefully be connected with an email notification option that for the initiation and finalisation of each step would send an email to members of the public who have signed up for such notifications. In addition to all the steps indicated in the project cycle, it could also include the stage when the Commission and a Member State have given the approval under Article 19 of the EIB's Statute.

30. This suggestion addressed a key issue regarding public participation, namely transparency



about what decisions are taken and when.

**31.** The EIB replied constructively, stating that as part of its commitment to enhance the transparency of its project cycle, the EIB will publish a time-line of major milestones of the project cycle. This user friendly timeline will be added to the project page. The EIB will furthermore seek to provide a system of automated email notifications for projects, so that subscribers receive emails at each phase.

**32.** The Ombudsman welcomes the EIB's response to this suggestion, and looks forward to seeing its full implementation.

## **Clear flagging of projects that concern 'emissions into the environment'**

**33.** The Ombudsman proposed this:

EIB online summaries could, from the outset, contain information on whether the project involves or gives rise to 'emissions into the environment' (as defined in Article 6(1) of Regulation 1367/2020). This is a priority category within the EU's Aarhus [legislation]. It is essential for the public to know if a project concerns emissions.

**34.** The EIB replied that such information is available in the environmental reports that it publishes in relation to projects, and that the information is accordingly provided already.

**35.** The Ombudsman welcomes that the information is provided in environmental reports that are published in relation to projects. However, given the particular importance given to information concerning emissions into the environment, the Ombudsman believes that it would be good practice to expressly and clearly mention in the online project summaries whenever a project concerns 'emissions into the environment'. There appears to be no administrative reason why such information could not be provided in the online summaries: it could be implemented by including a relevant field in the content management system, for example. The Ombudsman therefore restates this suggestion below.

## **Availability of information and guidance on redress**

**36.** The Ombudsman made the following suggestions:

On its project pages, the EIB could more systematically include information (a) on where information requests can be made at the national level where the project is implemented (this can be a simple address of an online page for submission of information requests), and (b) information on where to seek redress at the national level in case requests are felt not to be properly handled.



In addition to its own guide on accessing environmental information, the EIB could actively and systematically draw the public's attention to the detailed UNECE Implementation Guide on the Aarhus Convention to further guide the public on the application of the Aarhus [legislation].

**37.** With regard to the first suggestion, the EIB indicated that it would involve disproportionate work constantly to have to ensure the reliability of such a list. With regard to the second suggestion, the EIB informed the Ombudsman that its Guide to Accessing environmental information already provides readers with a link to the UNECE Implementation Guide.

**38.** The Ombudsman understands the EIB's concern on the first suggestion. Maintaining a list with information from numerous jurisdictions may pose a risk.

**39.** With regard to the second suggestion, the Ombudsman understands that the EIB refers to the '*Guide to accessing environmental and social information/documents held by the EIB*' [11]. It is indeed positive that this refers to the UNECE Implementation Guide. However, whereas the EIB's online project summary pages contain, in the right margin, useful links to the EIB's Transparency Policy and a Guide to Procurement for project promoters, these or other similar summaries appear not to contain a link to the EIB's above-mentioned guide to accessing environmental information. It would be useful to include that guide in the list of project relevant documents, and the Ombudsman therefore makes a related suggestion.

## **Publication of detailed information on the 'project cycle'**

**40.** The Ombudsman made the following suggestion:

The EIB could ensure that all documents - including its project summaries - are actively and systematically published, in addition to English, in the main official language of the country in which the project takes place as well as in languages of regions that are clearly and specifically significantly affected by the project in question (for instance an affected region across the border of the country where a project is implemented).

To avoid delaying publication, the translation could be uploaded once it is available following the publication of the English version.

The EIB could also ensure that each project page contains a link to one or more online translation tools that will enable rapid machine translation into other languages.

**41.** The first suggestion was intended to procure what seems to be an obvious standard: That the citizens in whose country/region the EIB financed project is implemented should be able to consult in their own language the related documents and information published by the EIB.

**42.** The EIB has replied that it does not have the resources to provide translations. With regard to online machine translation tools, it states that it cannot use its website to promote any such tools.



**43.** The Ombudsman understands that it could be disproportionate to translate (when needed) all the source documents of its various online project related summaries. This is because some very large source documents would be documents that the EIB has received from other sources, most importantly promoters. However, the promoters - working locally - will presumably in most cases have had to produce such documents in the relevant language (for the national authorities), meaning that their content is anyhow accessible to citizens in the country. With regard to the EIB's concern that it ought not to promote specific online translation tools, the Ombudsman considers that this concern is not unfounded. Moreover, interested members of the public are at any rate likely to be aware of at least one or two such online tools. In these respects, the Ombudsman therefore accepts the EIB's response.

**44.** However, the main objective behind the suggestion remains valid. Providing relevant translations is one fundamental aspect of how the EU implements transparency towards citizens. It is obviously relevant to provide translations of online project summaries to ensure that citizens of the country where the project is implemented are able to read about the project. The Ombudsman accordingly makes a related suggestion.

## **Detailed information on the project cycle**

**45.** The Ombudsman made the following suggestion:

The EIB gave the Ombudsman's inquiry team a helpful presentation on the project cycle. It contained factual descriptive information. The Ombudsman takes the view that providing such detailed information to the public can only help to further build trust in the professionalism of the EIB's work. The EIB could consider providing such more detailed information on the online pages where it already provides some information on its handling of projects.

**46.** This suggestion was made in light of very helpful, detailed information that the EIB provided to the Ombudsman's inquiry team in the form of a power point presentation. Moreover, when searching the EIB's website, different EIB pages or documents provided varying degrees of information about the EIB's project cycles. The Ombudsman considered that it would be useful for the EIB to publish one consolidated and detailed set of information on its project cycle.

**47.** The EIB has asked its services to implement this suggestion. The Ombudsman very much welcomes this positive response.

**48.** The Ombudsman assumes that the implementation of the suggestion will include the online publication of any new version - or any other comparable new or revised document(s) - of the EIB's 'Environmental and Social Handbook', a detailed, but outdated, handbook (2013) on the EIB's planning, management, appraisal and monitoring of EIB operations [12]. The Ombudsman notes that this 2013 Handbook was part of the background documents to the recent public consultation and revision of the EIB's Environmental and Social Sustainability Framework [13].



## **Timely publication of minutes of the Board of Directors meetings**

**49.** The Ombudsman suggested that the EIB publish the minutes of the Board of Directors within a maximum period of three weeks following the meeting.

**50.** This suggestion was aimed at improving a situation whereby the minutes of the Board of Directors were often published up to three months after the meeting. The Ombudsman found this excessive.

**51.** The EIB did not accept this suggestion. It stated that the draft minutes are discussed/debated collectively and in-depth at the subsequent meeting. This means in practice that the minutes can never be published earlier than after six weeks.

**52.** The Ombudsman cannot, without further concrete information to the contrary, accept that the directors would not be able and willing to agree rapidly on, and approve, the minutes through the electronic communication tools that are now extensively used at all levels of international institutions and governments.

**53.** The Ombudsman does not find the EIB's response reasonable. A practical consequence of the minutes being published so late is that it deprives the directors of the opportunity to take into account any constructive input that members of the public - who have consulted the minutes - may legitimately provide to them prior to their subsequent meeting.

**54.** The Ombudsman accordingly makes a related suggestion below.

## **The lack of publication of project summaries**

**55.** In its reply to the Ombudsman's suggestions, the EIB explained a number of contextual points. For instance, it mentioned that it has to pay particular attention to business interests. By way of example, it referred to the fact that it does not always publish information on new loan projects because doing so would harm business interests. It refers to this as follows:

*“ The EIB-Transparency Policy allows for a limited number of projects not to be published before Board approval to protect justified interests based on disclosure exceptions. In 2020, the EIB published project summaries for 72% of approved projects before the Board approval ”.*

**56.** The Ombudsman did not make any related suggestions in her preliminary assessment. The Ombudsman nonetheless considers it necessary now to address one aspect of this matter.

**57.** The Ombudsman fully recognises the business setting in which the EIB - like so many other EU institutions and bodies - operates, and that this creates business related confidentiality



obligations. For present purposes, however, the context is that of a public body (the EIB) and how its activities relate to public principles and standards. In this context, it can only be disconcerting when a project publication practice is compromised to the extent referred to by the EIB, as quoted above.

**58.** Similar to the previously mentioned distinction between the *content* of documents and their *existence*, it is presumably possible for the EIB to publish online project summaries that provide a minimum of information, but without disclosing confidential content, to allow the public to have information related to the *existence, nature and location* of projects that have a significant impact on the environment [14].

**59.** Moreover, it would be good practice to state expressly in such shorter summaries the exception for the withholding of information/documents.

**60.** The Ombudsman makes a related suggestion.

## Conclusion

Based on the inquiry, the Ombudsman closes this case because no further inquiries are justified at this point in time.

The complainants and the EIB will be informed of this decision.

## Suggestions for improvement

### Publish a list of source documents

**The EIB draws up online summaries that contain environmental information. It does so on the basis of external and internal documents. The references or titles of those documents can be listed and the list published together with the summaries and updated during the course of the project.**

**The EIB should make available a public list of references (titles and dates) of the documents from which it extracts and summarises 'environmental information', including the internal documents produced as part of its due diligence assessment of projects. Whereas the content of documents can by way of exception be subject to confidentiality, their existence as such can normally not be confidential.**

**The EIB should include such a list in any of the summaries that it publishes in relation to projects that have a significant impact on the environment, be it the initial project summaries or subsequent ones such as 'environmental and social data sheets' or summaries/sheets related to the monitoring and closure of any such project.**



## **Flag whenever a project concerns ‘emissions into the environment**

Information concerning emissions is provided in environmental reports that are published on projects. This is a good basis for fully implementing the Ombudsman’s suggestion to mention, expressly and clearly, in its online project summaries whenever a project concerns ‘emissions into the environment’. The Aarhus legislation gives special weight to this categorisation, which is essential environmental information for a project. There appears to be no administrative hindrance to providing this information on the online summaries (it can be a simple tick-box). The Ombudsman therefore suggests that the EIB does so.

## **Make a more visible reference to the Aarhus Implementation Guide**

It is positive that the EIB’s Guide to access environmental information refers to the UNECE Implementation Guide. Whereas the EIB’s online project summary pages contain, in the right margin, useful links to the EIB’s Transparency Policy and a Guide to Procurement for project promoters, these or other similar summaries appear not to contain a link to the EIB’s above-mentioned guide to accessing environmental information. The EIB should include that guide in the list of project relevant documents.

## **Provide translation of project material in language of the country concerned**

Providing relevant translations is one fundamental aspect of how the EU implements transparency towards citizens. Translations of online project summaries help ensure that citizens of the country where the project is implemented are able to read about the project. The EIB should step up its efforts in this regard.

## **Timely publication of minutes of Directors’ meeting**

The EIB should publish the minutes of the Board of Directors’ meetings within a maximum period of three weeks, including if this means that the Directors have to agree on and approve the minutes through electronic communication tools.

## **Systematically publish information about the existence of projects**



**Confidentiality considerations may prevent the EIB from publishing the full set of standard information for some projects. It should, however, be possible to address confidentiality concerns by publishing less information than what is normally made available to ensure rapid publication of the existence and nature of such projects. The EIB should do so and, in these cases, the specific confidentiality reason for the more limited publication should be mentioned.**

Emily O'Reilly European Ombudsman

Strasbourg, 21/04/2022

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

[2] The 'Aarhus legislation' here refer to the [Aarhus Convention](#) [Link] on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Union institutions and bodies and the [EU Regulation \(EC\) No 1367/2006](#) [Link] on the application of that Convention.

[3] Summaries refers to the information provided by the EIB on its website about projects (initial project summary, data sheets during and at the end of projects, 'environmental and social data sheet' etc.).

[4] Available at: <https://www.ombudsman.europa.eu/en/doc/preliminary-finding/en/142831> [Link]

[5] <https://www.eib.org/en/publications/eib-group-transparency-policy-2021> [Link]

[6] <https://consult.eib.org/consultation/essf-2021-en/> [Link]

[7] The confirmatory application would constitute the 'appropriate administrative approaches' as per the [EU legislation](#) [Link] governing the Ombudsman's work. For 'confirmatory application', cf. the EIB's administrative rules, [articles 5.31-5.33](#) [Link].

[8] Cf. articles 4.7 and 4.8 of the EIB's Transparency Policy, providing project summaries are published at least three weeks before the project is considered for approval by the EIB's Board of Directors.

[9]

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



[10] Already in a previous inquiry, the EIB informed the Ombudsman of this 'extraction-summarise'-approach (Cf. OI/3/2013/MHZ, para 22-23, <https://www.ombudsman.europa.eu/en/decision/en/54587> [Link]).

[11] [https://www.eib.org/attachments/access\\_to\\_information\\_en.pdf](https://www.eib.org/attachments/access_to_information_en.pdf) [Link]

[12] “ A.1 Introduction 1. *The Environmental and Social Procedures and Practices Handbook (herein referred to as the “Handbook”) provides to EIB project teams advice on the planning and management of the environmental and social appraisal and monitoring of EIB operations in accordance with the established EIB environment and social policy framework. The Handbook is based on an approach to appraising, managing and monitoring environmental and social impacts, risks and opportunities in proportion to their significance. It describes the steps for determining the scope of the environmental, social and monitoring activities the EIB shall carry out for all operations in all regions throughout the project cycle. It also explains the role of specialised units or individuals who collectively ensure that the EIB’s activities respond to the highest possible standards. The practices and standards apply to all of the EIB’s operations .*”

[13] <https://consult.eib.org/consultation/essf-2021-en/#fact-bank-2> [Link] (list of documents in ‘ Consultation Documents ’).

[14] The Secretariat of the Aarhus Compliance Committee commented on this issue in its contribution to the EIB’s new transparency policy “ *It is of concern that there would be no public disclosure of the existence of these projects at all before Board approval and, in some cases, not even before loan disclosure. While some or even most of the information typically included in the project summary might in a particular case need to [be] withheld in accordance with the exceptions in section 5, this should not prevent the disclosure of the rest of the project summary information (see article 4(6) of the [Aarhus] Convention).* ”

[https://consult.eib.org/consultation/tpconsultation-2020-en/consultation/view\\_respondent?uuld=17687507](https://consult.eib.org/consultation/tpconsultation-2020-en/consultation/view_respondent?uuld=17687507) [Link]

(page 9, top).