



Decision on how the European Investment Bank discloses environmental information about projects it finances through intermediaries (case 1251/2020/PB)

Decision

Case 1251/2020/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 indirectly through intermediaries. The complainants, three civil society organisations, were concerned that, by publishing too little environmental information about these projects, the EIB prevents the public from fully expressing its views on environmental issues with a view to influencing the EIB's financing decisions.

The Ombudsman found that the EIB neither can nor should seek to hold and publish all environmental information related to projects financed through intermediaries. Improvement should instead be achieved through additional obligations on financing intermediaries. The Ombudsman made related suggestions to address this, as well as additional practical suggestions.

The EIB agreed to implement some of the Ombudsman's suggestions but otherwise concluded that its main practices suffice. For some of the suggestions to which the EIB did not agree, the Ombudsman believes that it would be in the public interest for the EIB to implement these changes. As such, she reiterated those suggestions and has closed the case.

Introduction

1. Three civil society organisations complained to the European Ombudsman about the EIB's practice regarding the publication of environmental information for projects that it finances indirectly through intermediaries. The complainants consider, in summary, that there is insufficient information about projects that have a significant impact on the environment and which are financed by the EIB through intermediaries. The EIB does not even publish information about the existence of such projects. It also does not effectively oblige intermediaries or the project partners themselves to publish such information.

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.

The inquiry and this decision

5. In the context of the inquiry, the Ombudsman issued a preliminary assessment [3] 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.

6. 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.

7. The EIB has recently revised its administrative rules on transparency practices [4] and has also implemented a major revision of its environmental and social framework [5] . 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.

8. 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') [6] .

9. 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.

10. In her preliminary assessment, the Ombudsman issued the suggestions set out below.

Publication of information and documents concerning larger project

11. The Ombudsman suggested that the EIB introduce an improved standard approach to larger projects for which it normally holds relevant 'environmental information' [7] . The Ombudsman's assessment relating to this suggestion can be found in her decision on the related inquiry 1065/2020 [8] . [9]



Publication of information for smaller projects

12. With regard to smaller projects, for which the EIB will often not hold the 'environmental information' as such itself, the Ombudsman suggested the following:

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.

13. The EIB replied that imposing additional requirements on financial intermediaries " *would significantly affect the modus operandi of the EIB and its interaction with the [financial intermediaries], ultimately undermining the EIB's capability to fulfil its tasks...* ". It added that the EIB already contractually requires financial intermediaries to impose EIB requirements on sub-projects and that EIB requirements include stakeholder engagement and disclosure obligations.

14. In summary, the EIB considers that its current practices suffice. It explains in some detail how it carefully checks that intermediaries have the necessary know-how and experience to respect environmental rules, and that it trusts that they will then do so.

15. With regard to the EIB's reference to its interaction with financial intermediaries, it is unclear whether the EIB points to what is essentially a market concern: That some financial intermediaries would hesitate doing business with the EIB if the EIB were to impose requirements to publish environmental information on projects that significantly affect the environment. The Ombudsman cannot conduct a detailed assessment on this matter given that it has not in any way been substantiated.

16. The concerns expressed by the complainants were less about whether the EIB properly carries out its tasks in relation to intermediaries, and more about whether sufficient information is available for them - and other members of the public - to check that intermediaries and promoters respect their environmental obligations in practice (the latter including the obligations that the EIB imposes on them in addition to the obligations contained in relevant legislation). Given the developments set out above in the section *The inquiry and this decision* , the Ombudsman will not pursue this matter further at this stage.

17. The Ombudsman's second suggestion was meant to address an obvious issue: as the public has special rights related to activities that have a significant impact on the environment, they need to know about the existence of such activities to be able to exercise those rights.



18. Therefore, if the EIB has, or can extract, a list of projects financed via intermediaries that have a significant impact on the environment, it could publish such a list. If it does not have - or cannot extract - such a list, this shortcoming should be addressed. As suggested, the EIB could ask financial intermediaries, to provide it 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.

19. The Ombudsman makes a related suggestion.

Additional training to financial intermediaries

20. The Ombudsman made the following suggestion, which drew on a previous similar recommendation made by the EIB's Complaints Mechanism:

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.

21. The EIB replied that it will implement this suggestion and the recommendations made by its Complaints Mechanism.

22. The Ombudsman welcomes this response.

Provide clarity regarding what projects are considered as having a 'significant impact on the environment'

23. Whether a project has a 'significant impact on the environment' is important for establishing what rights the public has. The Ombudsman took the view that the EIB does not currently publish clear guidance regarding what types of activities it considers as having a 'significant impact on the environment', as understood under the relevant rules. As such, the Ombudsman made a suggestion aimed at ensuring the EIB provides greater clarity to intermediaries as regards what type of activities are considered as having a significant impact on the environment [10].

24. As the EIB's reply to this suggestion was not satisfactory, the Ombudsman makes an updated suggestion below with a view to being more specific.

Section on intermediary-financed projects in the annual EIB transparency report



25. The Ombudsman suggested that the EIB could include a dedicated section on intermediated financing in its annual transparency report.

26. The EIB welcomed this suggestion, which it said would allow for better communication about the actual level of transparency concerning intermediated financing. It will implement this suggestion in future annual reports on the implementation of its Transparency Policy.

27. The Ombudsman welcomes the EIB's response.

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

Publication of information for smaller projects

If the EIB already has access to consolidated information regarding the name, place and nature of smaller projects, the Ombudsman believes it should publish this, potentially in the form of a list online. If it does not have access to such information, the EIB could ask financial 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 the existing online project page.

Provide clarity regarding what projects are deemed to have a 'significant impact on the environment'

Whether a project has a 'significant impact on the environment' has implications for rights under the Aarhus legislation.

The EIB should publish - with revisions or updates if necessary - the rules and/or guidelines that it applies to determine whether a project is likely to have a 'significant impact on the environment'.

Emily O'Reilly European Ombudsman

Strasbourg, 21/04/2022

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



[2] The 'Aarhus legislation' here refer to the Aarhus Convention 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 on the application of that Convention.

[3] Available at: <https://www.ombudsman.europa.eu/en/doc/preliminary-finding/en/142832>

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

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

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

[7] See Part 1.6.3 of the EIB's reply to the Ombudsman's preliminary assessment, outlining the larger intermediated projects in which it is actively involved in the environmental assessments:

<https://www.ombudsman.europa.eu/en/doc/correspondence/en/154573>

[8] <https://www.ombudsman.europa.eu/en/case/en/57278>

[9] It should additionally be noted that the EIB pointed to the following "*... accepting a suggestion from the [Ombudsman], the [new 2021] EIB- [Transparency Policy] no longer contains the provision on individual allocations (sub-projects) that appeared in Article 5.13 of the 2015 EIB Group Transparency Policy*".

[10] The suggestion was this: 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. The extent of the use of the term can for instance be observed through an online search within the EIB website.