

Decision on the refusal of the European Investment Bank to grant public access to the minutes of Management Committee meetings (case 1252/2020/PB)

Decision

Case 1252/2020/PB - Opened on 27/07/2020 - Decision on 21/04/2022 - Institution concerned European Investment Bank (No further inquiries justified) |

The case concerned a refusal by the EIB to grant a civil society organisation public access to minutes of meetings of its Management Committee at which the possible co-financing of a biomass power generation plant in Spain was discussed ('Curtis Biomass Power Generation Plant').

The Ombudsman found that the EIB had not given adequate reasons for refusing to grant access to the minutes. The Ombudsman therefore made a proposal for solution that the EIB grant access to the minutes of the meetings in question.

The EIB replied that it had fully respected the applicable principles and rules. However, it disclosed limited parts of the minutes that concerned the Spanish biomass project.

The Ombudsman invited the EIB to reconsider its approach to requests for public access to such minutes and asked it to inform the Ombudsman within six months of changes to its approach. She closed the case on this basis.

Background and inquiry

1. A civil society organisation requested access to minutes of meetings of the EIB's Management Committee that contained information on the EIB's deliberations on the possible co-financing of a biomass power generation plant in Spain ('Curtis Biomass Power Generation Plant').
2. The EIB refused to grant access to the documents. In doing so, it referred to exceptions provided for under its rules on public access to documents and argued, among other reasons, that disclosing the documents could undermine the EIB's decision-making process.
3. The civil society organisation, together with two others, then complained to the European



Ombudsman.

4. The Ombudsman found that the EIB had not given adequate reasons for its refusal to give access to the documents, and made a proposal for solution [1] .
5. The EIB replied that it had fully respected the applicable rules [2] . However, it disclosed, by way of partial access, limited information from the minutes related to the Curtis Biomass Project.
6. The EIB regrettably did not state whether it could have disclosed that information at the time of the document request.
7. The EIB also did not state whether it disclosed the said information only because the rest of the document remains confidential, or whether it disclosed that information because this is what the complainants appeared to be most interested in. [3]
8. In their comments, the complainants continued to disagree [4] with the EIB's assertion that it had respected the applicable rules and principles. They said that the request had been for access to the documents, and not only to information that specifically concerned the Curtis Biomass Project. They also said that access to the information concerned had lost much of its value by now and that it was more important to consider future implications, that is how the EIB will deal with similar access requests in the future for minutes of the Management Committee.

The Ombudsman's assessment

9. The Ombudsman takes the view that the assessment in the proposal for solution [5] remains valid, and reference is therefore in the first place made to that assessment. The EIB has still not provided valid reasons for refusing disclosure based on the content of the documents (which the Ombudsman inquiry team reviewed).
10. Additionally, the Ombudsman finds it necessary to make the following observations.
11. It can be challenging to give reasons for refusing to disclose a document. This is because of the inherent difficulty of telling someone about the content of documents whilst revealing as little as possible about that content.
12. However, it remains a legal expectation that a statement of reasons for a non-disclosure decision should ideally enable the review bodies in question - here the Court of Justice and the European Ombudsman - to examine the legality of the decision on the basis of the stated reasons. The reasons have to be as specific as possible, regarding the content of the documents and any other related facts. It is not sufficient merely to cite an exception or to refer to an exception with a reference to obvious facts.
13. In the context of this complaint, the EIB should have more clearly explained why disclosing the minutes could undermine its internal decision-making process. Simply stating that minutes



of a meeting are intended for internal use does not help to explain why their disclosure could undermine the decision-making process. By way of contrast, if experience shows that disclosure of minutes would lead to inappropriate external pressure being exercised on individual members of the meeting concerned, then that could provide an additional element that, in its specific context, may be a valid reason.

14. The disclosure of minutes of one meeting does not in any way prevent the EU institution or body from deciding that minutes for a subsequent meeting cannot be disclosed. The latter may contain such frank exchanges and opinions that protection thereof can be justified.

15. In this case, the Ombudsman could not conclude that the EIB had conducted a concrete assessment, and its reply to the proposal for a solution did not alleviate this concern.

16. As any further disclosure of the documents at this point in time would be unlikely to respond to any outstanding information need, the Ombudsman finds no reason to pursue the matter of the disclosure of these specific documents. However, as the EIB's approach to similar cases in the future is of utmost relevance, the Ombudsman invites the EIB to carefully reconsider its approach in cases such as this and requests the EIB to inform the Ombudsman within six months of changes made in the approach.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the finding that the EIB's reasons for not disclosing the documents were not adequate but that further inquiries are not justified at this point in time.

The European Investment Bank shall inform the Ombudsman within six months of the changes made in its approach to dealing with requests for public access to minutes of its Management Committee.

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

Emily O'Reilly European Ombudsman

Strasbourg, 21/04/2022

[1] The Ombudsman's short solution proposal is available here:

<https://www.ombudsman.europa.eu/en/solution/en/154575> [Link]



[2] The EIB's reply is available here:

<https://www.ombudsman.europa.eu/en/doc/correspondence/en/154576> [Link]

[3] The Ombudsman's proposal for solution concerned access to the minutes as such (and not information related to one project).

[4] The complainants' remarks are available here:

<https://www.ombudsman.europa.eu/en/doc/correspondence/en/154577> [Link]

[5] <https://www.ombudsman.europa.eu/en/solution/en/154575> [Link]