



## **EIB's Reply to the EO's Preliminary findings on how the European Investment Bank discloses environmental information in relation to projects it finances directly (case 1065/2020/PB)**

### **1. General remarks**

#### *1.1 The European Investment Bank (EIB)*

1.1.1 In paragraph 5 of her Preliminary findings, the EO suggests that “[...] *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 other banks (‘financial intermediaries’)*”.

1.1.2 This representation of the EIB requires a rectification. In accordance with Articles 308 and 309 of the TFEU and the EIB Statute<sup>1</sup>, the EIB has been established as a body entrusted with a specific financial mission the aim of which is to contribute to the development of the internal market in the interest of the Union and to help pursue EU objectives through offering financing to eligible projects. The special traits of operational and functional autonomy of the EIB within the framework of the Union have been acknowledged by the long-established case-law of the Court of Justice of the European Union. The EIB's methods, function, products and procedures therefore are those of the banking sector.

#### *1.2. The EIB Complaints Mechanism*

1.2.1 The EIB Complaints Mechanism was established in 2008 (and not in 2009, as indicated in paragraph 8 of the Preliminary findings).

#### *1.3 Representativeness of the sample of projects inspected by the EO*

1.3.1 The EIB notes that the Preliminary findings and the subsequent suggestions are based on the inspection of documents pertaining to a very limited sample of EIB operations, which concern only two operational sectors (transport and energy). While the sample cannot be deemed as representative of the whole portfolio of EIB-financed operations, the EIB's concern is that the Preliminary findings and related suggestions appear to have a general scope that is addressed to the entirety of the EIB's direct financing operations. The EIB would therefore like to clarify its understanding that the Preliminary findings constitute the Ombudsman's position on the EIB's approach to proactive dissemination of environmental information with regard to the five operations concerned by the inspection.

---

<sup>1</sup> Protocol (No 5) to the Treaties.



1.3.2 EIB operations and – accordingly – the quantity of environmental information gathered or produced<sup>2</sup> by the EIB during their appraisal and monitoring significantly differ on the basis of a number of factors, including their environmental impacts and risks of the operation. The EIB considers that the Preliminary findings do not provide a comprehensive and exhaustive account of the EIB’s project documentation (see documents produced by the EIB as part of the appraisal in Sections 1.4 and 1.5 of this Note) nor the EIB’s practice of pro-active dissemination of environmental information pertaining to its operations (see Section 1.6 of this Note).

1.3.3 Finally, the projects included in the sample were appraised in the period 2013 – 2016. In paragraph 46 of the Preliminary findings, the EO acknowledged, “the EIB’s internal working methods and decision-making documents/information are relatively complex and evolve regularly”. For example, whereas the *Overall Environmental and Social Impact Assessment Form (D1)* was used by the EIB in the past, the EIB has meanwhile discontinued its use. Therefore, the EO’s Preliminary findings draw conclusions on EIB’s past practices and they are not always pertinent to the current EIB’s internal working methods and decision-making documents/information.

#### 1.4 The Appraisal Report

1.4.1 In the light of the remark expressed in Section 1.3 of this Note, the description of the Appraisal Report made in paragraph 37 of the Preliminary findings requires some clarifications. The EIB’s procedures do not lay down instructions to exclude sensitive political or commercial information from Appraisal Reports. In fact, Appraisal Reports may contain sensitive political information and are very likely to contain commercial information (e.g. project description, project costs, promoter’s strategy, financial return).

1.4.2 It is worth recalling that the purpose of the Appraisal Report is to substantiate the EIB services’ opinion on the project. In line with § 1.3.3 of this Note, the procedures and practices governing the content of the Appraisal Report are evolving. In addition to the Environmental and Social Data Sheet (ESDS), the Appraisal report currently<sup>3</sup> contains:

- a. A section on environment where direct reference to ESDS is made
- b. Appendix A.1.2 – Project related conditions and undertakings to be fulfilled (including environmental, climate and social project-specific conditions).
- c. Appendix D - Environment and Green House Gas report
- d. Appendices E.1 & E.2 - Climate Action & Environmental Sustainability summaries of rational and calculation
- e. Appendix E.3 - Climate Risk Assessment Form
- f. Appendix E.4 – Paris Alignment.<sup>4</sup>

---

<sup>2</sup> During the EIB Project Cycle, the EIB may hold two sets of documents containing environmental information: Project documents from third parties; and Project documents prepared by the EIB.

<sup>3</sup> Procedures put in place as of 30 September 2021.

<sup>4</sup> Please note that documents listed under items c-f are the most recent additions to the Appraisal report.



1.4.3 The EIB services' opinion on the project's environmental and social risks and impacts and the measures to reduce/mitigate them (including conditions to disburse and undertakings) is streamlined in the ESDS, submitted to the EIB Board of Directors as part of the approval procedure and published on the EIB's website.

## 1.5 The ESDS

1.5.1 Paragraph 12 of the Preliminary findings states that *"The relevant parts of the EIB's current policy provide, in summary, that for each lending project, the EIB actively publishes short summaries of 'environmental information' rather than all of the primary source documents."*

1.5.2 In the past, the ESDS contained summaries of other documents prepared as part of the Bank's environmental and social due diligence (EIB E&S DD). However, in line with the duty to organize environmental information falling under article 4 of the Aarhus Regulation with a view to its progressive dissemination, the ESDS has been evolving. The ESDS currently contains a summary of the EIB E&S DD.

1.5.3 In line with Volume II of the 2013 Environmental and Social Handbook, the *"ESDS contains records of the EIB's E&S due diligence at the time of appraisal"* (§§ 90, item 36 and 346); *"[t]he ESDS shall contain a description of the environmental and social impacts of the project as well as proposed measures to manage such impacts"* (§ 349). Furthermore, Box E states that: *"[...] the ESDS is the only document that pulls together and summarises EIB's environmental and social due diligence [...]"*.

1.5.4 The ESDS should no longer be regarded as a derivative source, where information taken from other primary source documents is collected, selected and elaborated. On the contrary, it shall rather be regarded as a primary source document reflecting in a comprehensive way the EIB E&S DD and making it accessible to the EIB Board of Directors and the general public.

1.5.5 As of recently, the ESDS encompasses environmental information presented in § 1.4.2 that falls under Article 4(2) of the Aarhus Regulation

## 1.6 The representation of EIB's practices made in Annex II of the EO's preliminary findings

1.6.1 In Annex II to the Preliminary findings, the EO refers to case OI/3/2013 in which the EIB explained its practice to proactively disseminate environmental information as well as to the EIB-CM Conclusions Report of 26 March 2019 concerning case SG/G/2016/01 Transparency Policy.



1.6.2 Annex II suggests that the EIB's practice of proactive dissemination of environmental information is implemented through provisions of the 2015 EIB Group Transparency Policy (EIB-TP) concerning the online publication of project summaries. However, the cornerstone of the EIB's practice to pro-actively disseminate project-related environmental information is [the EIB Public Register](#), which was set up in 2014.

### *1.7 The concept of "commercial interest"*

1.7.1 In the Preliminary findings, the concept of "commercial interest" is interpreted to cover intellectual property rights and information that, if disclosed, would specifically grant competitors an advantage over the project promoters (see paragraph 52 of the Preliminary findings).

1.7.2 Such a restrictive interpretation, however, does not find grounds in the EIB-TP (or in Regulation 1367/2006 - the Aarhus Regulation).

### *1.8 Scope of the EO's inquiry*

1.8.1 In July 2020, the EO informed the EIB of its decision to launch an inquiry into a complaint from three NGOs about the EIB's disclosure of environmental information. The letter of the EO referred to the complainants' concerns about the compliance of the EIB's current disclosure practices with the Aarhus Regulation. The EO also informed the EIB of her intention to look into another concern of the complainants unrelated to the way the EIB disclosed environmental information in relation to direct financing, namely, the adequacy and timely availability of the minutes of the Board of Directors.

1.8.2 In November 2020, the EIB expressed its willingness to submit additional views on the complaint. In order to ensure the effectiveness of this exercise, the EIB requested the EO to clarify which were the issues raised in the complaint that the EO considered relevant for her inquiry and intended to address. In June 2021, the EO provided the EIB with her preliminary findings and suggestions, before the EIB had expressed its additional views on the subject matter of the inquiry. The EIB notes that the EO may make suggestions for improvement regarding issues related to the inquiry in the course of an inquiry<sup>5</sup>.

1.8.3 The EIB notes that there are three types of information namely:

- a. Environmental information which falls under Article 4 of the Aarhus Regulation and, as such, shall be organised and pro-actively disseminated, provided that no exceptions to disclosure apply;

---

<sup>5</sup> Article 6.1 of the Decision of the European Ombudsman adopting Implementing Provisions, available at: [Implementing provisions | European Ombudsman \(europa.eu\)](#), accessed on 12 October 2021.



- b. Environmental information which does not fall under Article 4 of the Aarhus Regulation and shall be disclosed upon request, provided that no exceptions to disclosure apply; and
- c. Information that does not constitute environmental information and whose (pro-active or reactive) disclosure is exclusively governed by the EIB-TP.

1.8.4 Although the complaint concerns the EIB's compliance with the Aarhus Regulation, the EIB notes that some of the preliminary findings and suggestions relate to information that does not constitute environmental information. The EIB would like to emphasise that its practice to pro-actively disseminate non-environmental information should be reviewed exclusively in the light of the EIB-TP.

## **2. The applicable regulatory framework**

2.1 Despite the complainants' concerns about the compliance of the EIB's disclosure practices with the Aarhus Regulation, the EIB notes that, in several passages, the preliminary findings make reference to the Aarhus Convention and only marginally refer to the Aarhus Regulation, which is the relevant EU legislative instrument implementing the provisions of the Aarhus Convention. The EIB wishes to emphasise that, as any other EU institution or body, the EIB is bound to comply with the Aarhus Regulation, the relevant provisions of which have been incorporated into the EIB-TP. It is the spirit of the Aarhus Regulation, which guided the EIB's approach when setting up, and populating its Public Register - an approach the EO appreciated in the Decision on OI/3/2013, her Own-Initiative concerning pro-active dissemination of environmental information by the EIB.

2.2 Article 1 of the Aarhus Regulation specifies that its objective is to contribute to the implementation of the obligations arising under the Aarhus Convention, by laying down rules to apply the provisions of the Convention to EU institutions and bodies.

2.3 The Aarhus Regulation provides for specific rules regarding the collection and pro-active dissemination of environmental information, under Article 4(1). Namely, it provides that:

- the EU institutions and bodies shall organise the environmental information (i) which is relevant to their functions and (ii) which is held by them, with a view to its active and systematic dissemination<sup>6</sup>;
- such systematic dissemination shall be conducted, in particular, by means of computer telecommunication and/or electronic technology;
- The information shall be made progressively available in electronic databases that are easily accessible to the public through public telecommunication networks;

---

<sup>6</sup> The Aarhus Regulation does not forbid the extraction and organisation of environmental information with a view to its proactive dissemination.



2.4 Environmental information, which is relevant to the EIB's functions, is the information requested by the EIB from promoters or generated by the EIB for the purpose of the performance of its statutory functions, which corresponds in this context to lending and financing of operations.

2.5 Considering the EIB's functions and pursuant to Article 4(2) of the Aarhus Regulation, there are some categories of environmental information that typically the EIB may hold and that can fall in the categories enlisted by the Aarhus Regulation for proactive dissemination, including:

- Data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment (Article 4(2)(e));
- Environmental impact studies and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed. (Article 4(2)(g)).

### **3. EIB's position on the EO's Preliminary findings and suggestions**

#### *3.1 The EIB's and other IFIs' transparency standards*

3.1.1 The EIB takes note of the EO's interest (paragraph 22 of the Preliminary findings) in – separately from this inquiry – looking into whether and how to examine the complainants' allegation that other International Financial Institutions would be more transparent than the EIB with regard to the E&S DD.

3.1.2 The EIB is available to assist the EO in this respect in order to reach reliable, objective and factual findings.

#### *3.2 The timing of processing disclosure requests*

3.2.1 With regard to the complainants' allegation that the EIB's processing of disclosure-requests is too slow (paragraph 23 of the Preliminary findings), the EIB emphasises that the EIB-TP provides for a timeline of 15 days following receipt (Article 5.22). The EIB-TP expressly provides that in exceptional cases, for example in the event of an application relating to a very long document or when the information is not readily available and complex to collate, the time-limit may be extended and the requestor shall be informed accordingly no later than 15 working days following receipt (Article 5.23). In such case, the EIB will endeavour to provide a reply within 30 working days (Article 5.24).



3.2.2 In this regard, the EIB annual reports on the implementation of the EIB-TP consistently show a timely and high level of disclosure upon request. For example, the [latest report](#) shows that, in 2020, the EIB handled 97% of the queries received from civil society within the deadlines set out in the EIB-TP and provided total or partial disclosure of the requested documents in 81% of cases.

### 3.3 *Systematic pro-active dissemination of internal minutes and related proposals*

3.3.1 The EIB shares the EO's view that:

- The Aarhus Regulation and the general rules and standards of good administration do not require to actively publish internal minutes and related proposals during and after the internal decision-making procedure (paragraphs 28, 31 and 33 of the Preliminary findings);
- The preliminary and purely deliberative content of internal minutes and proposals do not constitute per se environmental information for proactive dissemination (paragraph 29 of the Preliminary findings);
- The analogy with the EU legislative process made by the complainants is not applicable (paragraph 30 of the Preliminary findings).

### 3.4 *Specific ad hoc requests for disclosure of internal minutes and related proposals*

3.4.1 The EIB would like to add some elements in order to complement the EO's statement in paragraph 32 (and referred to in paragraph 33) of the Preliminary findings, as it appears to be incomplete and as such it may be misleading. Were the EIB to receive a disclosure request for minutes and/or related internal proposals, the EIB must proceed in accordance with the EIB-TP to conduct a case-by-case assessment in order to check if the document/information requested is covered (fully or partially) by any of the exceptions established in the EIB-TP. Therefore, there is an obligation on the EIB to assess the disclosure request but this does not automatically imply that the Bank will be in a position to disclose the document(s) requested, as the disclosure (and its extent) depends on the outcome of the above-mentioned *ad hoc* assessment.

3.4.2 Based on the above, the EIB considers that - in order to be accurate - the statement contained in paragraph 32 "*This does not however rule out an obligation of disclosure in relation to specific ad hoc disclosure requests*" should be complemented by "*in case the EIB's assessment of the documents requested does not detect exceptions to disclosure established by the EIB Group Transparency Policy or further to such assessment, it concludes that such information shall be disclosed (e.g. in case there is an overriding public interest)*".



### 3.5 Proactive dissemination of “factual information” during the EIB’s decision-making procedure

3.5.1 The EIB notes that the concept “factual information” is not defined in the EIB-TP (or in the Aarhus Regulation) and that, as such, the same provisions apply whether information is interpreted as being “factual” or not.

3.5.2 Taking into account different types of information (see § 1.8.3), the EIB notes that the Aarhus Regulation does not require EU institutions and bodies to pro-actively disseminate environmental information other than the types indicated in its Article 4. Based on the above, the EIB reads the EO’s suggestion that the EIB pro-actively disseminate “source documents concerning facts, factual findings and related technical/economic assumptions and calculations” as early as possible during the EIB’s decision-making procedure in the light of the definition of environmental information provided by Article 4 of the Aarhus Regulation (see § 2.5 of this Note). The EIB also wishes to stress that economic assumptions and calculations cannot be deemed to constitute “environmental information” as per Article 4 of the Aarhus Regulation.

3.5.3 A different interpretation of the EO’s suggestion would force the EIB to act outside the legal certainty ensured by the Aarhus Regulation for all EU institutions and bodies. Imposing more extensive requirements on the EIB (a EU body operating in the financial market) than those applying to EU institutions and bodies would significantly affect the *modus operandi* of the EIB and its interaction with project promoters, ultimately undermining the EIB’s capability to fulfil the mandate established by the Treaties.

3.5.4 Therefore, pro-active dissemination of environmental information, which does not fall within the categories listed in Article 4 of the Aarhus Regulation, within timeframes which do not find grounds in neither in the EIB-TP nor the Aarhus Regulation raises serious concerns of legal, operational and institutional nature.

### 3.6 Pro-active dissemination of environmental information produced by the EIB as part of projects’ appraisals

3.6.1 In the light of the clarifications provided in sections 1.4-1.6 of this Note, it results that no relevant environmental information which is subject to pro-active dissemination as per Article 4 of the Aarhus Regulation is excluded from the ESDS (see paragraph 38 of the Preliminary findings), whose purpose is to present relevant environmental information (i.e. the EIB’s E&S DD on a given operation) to its governing bodies and the public.



3.6.2 According to the EIB's practice at the time of the establishment of its Public Register, as previously announced by the EIB (see paragraph 39 of the Preliminary findings), the ESDS contained summaries of other documents. However, as mentioned in § 1.5.2, the current practice of the EIB is that the ESDS contains a summary of the EIB E&S DD.

### *3.7 Pro-active dissemination of environmental information produced by third parties and shared with the EIB during the project cycle*

3.7.1 Pursuant to the EIB-TP, the EIB pro-actively disseminates "primary source documents" containing the relevant environmental information (since 2018 the EIB pro-actively discloses full EIAs both for EU and non-EU operations as well as other relevant documents pertaining to a project's environmental and social performance) when applicable (i.e. when projects have significant impact on the environment), following their receipt by the EIB.

3.7.2 Therefore, in line with Article 4 of the Aarhus Regulation, the EIB already publishes the relevant environmental information, which the EIB reviews as part of its E&S DD of projects, when the latter have a significant impact on the environment<sup>7</sup>.

### *3.8 The timing of pro-active dissemination of environmental information*

3.8.1 The EIB already implements the EO's suggestion (paragraph 47 of the Preliminary findings) insofar as the EIB pro-actively disseminates project-related environmental information listed in Article 4 of the Aarhus Regulation prior to the Board approval.

3.8.2 The EIB-TP 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<sup>8</sup>.

3.8.3 With regard to the ESDS, a document submitted to the EIB Board as part of the proposal of the Management Committee to approve a given operation, this is published on the EIB's website after the Board Approval because, as part of the approval, the Board may require a modification of the content of the ESDS.

---

<sup>7</sup> As indicated in § 2.5, this includes environmental impact studies and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed, as required under Article 4(2)(g) of the Aarhus Regulation.

<sup>8</sup> Report on the implementation of the EIB Group Transparency Policy in 2020, available at: [Report on the implementation of the EIB Group Transparency Policy in 2020](#), accessed on 1 October 2021.



3.8.4 Furthermore, the EIB emphasises that:

- With regard to third-party documents: under EU law and/or EIB standards, competent authorities and/or the Promoter are responsible for publishing environmental information to enable early and effective participation by the public concerned in relevant decision-making processes.
- With regard to documents produced by the EIB (ESDS): the Aarhus Regulation does not require a specific timing for the pro-active dissemination of environmental information.

*3.9 EIB's concluding remark on the timely pro-active dissemination of environmental information produced by the EIB and/or shared by third parties as part of the EIB's E&S DD*

3.9.1 Based on the above considerations, the EIB trusts that it already implements the EO's suggestions. The EIB already ensures that, for projects having a significant impact on the environment, EIA reports as well as ESDS (i.e. source documents, originated by third parties or by the EIB itself, which contain the relevant environmental information) are pro-actively published.

3.9.2 The transparency by-design approach suggested by the EO is in fact the approach taken by the EIB when it decided to segregate its E&S DD in a separate document (the ESDS), with the intention to anticipate transparency needs of the public when it comes to the EIB's E&S DD.

3.9.3 As regards environmental information shared by third parties with the EIB, the EIB wishes to stress that:

- "Primary source documents" containing environmental information listed in Article 4 of the Aarhus Regulation are already proactively disseminated by the EIB (see sections 3.6-3.8 of this Note).
- The EIB must operate within the applicable regulatory framework and remain sufficiently close to market practice in order to attract and retain clients. As such, it is not in a position to impose on project promoters' requirements, which do not stem from the regulatory framework applying to them and/or the EIB and would undermine the EIB's capability to operate in the market, thus jeopardising the achievement of its institutional mandate.

*3.10 Pro-active dissemination of environmental information produced and/or gathered as part of the monitoring of EIB's operations*

3.10.1 As recognised by the EO (paragraph 59 of the Preliminary findings), the applicable regulatory framework does not establish when monitoring data or summaries shall be pro-actively disseminated.



3.10.2 The EIB shares the EO's view (paragraph 63 of the Preliminary findings) that it is unrealistic to provide a full-scale pro-active dissemination and/or public listing of all monitoring-related activities affecting the environment performed by the EIB.

3.10.3 The decision of the EIB to pro-actively disseminate the Environmental and Social Completion Sheet (ESCS) at project completion should not be interpreted as "*being afraid of public interest*" in the EIB's mission and activities. This decision rather results from a pragmatic solution to the concern raised in § 3.10.2 of this Note and the Bank's commitment to inform the public about the outcome of E&S issues identified at appraisal stage. The ESCS reflects this information in a transparent and structured way, once a project has reached completion stage.

3.10.4 The EIB treasures stakeholders' engagement as demonstrated by EIB-TP (see section 7) and its interaction with civil society organisations and the public at large in policy reviews and at project level. The EIB's approach to pro-active dissemination of environmental information related to monitoring activities intends to combine the good and smooth functioning of the EIB project cycle with the EIB's interest in engaging with external stakeholders, which may be aware of possible problems in the implementation of EIB-financed projects.

3.10.5 As suggested by the EO (paragraph 60 of the Preliminary findings), the EIB considers that the transparency objective (which aims at improving the quality of EIB-financed operations) can be attained with actions other than the imposition of transparency by-design measures for monitoring activities, regardless of their number and structure. In addition to the ESCS, a transparency by-design initiative pro-actively disseminating the outcome of the EIB's environmental and social monitoring of its operations at project completion stage, the EIB invests in a number of other initiatives to pursue the greatest participation possible of the general public in its activities:

- Timely pro-active dissemination of information about EIB operations as soon as possible in the EIB project cycle (see section 3.8 of this Note);
- Timely pro-active dissemination of primary source documents produced by the EIB (ESDS) or shared by third parties with the EIB (EIA reports) when projects have significant environmental impact (see sections 3.6 and 3.7 of this Note);
- Establishment of a dedicated service at the EIB for the handling of information and disclosure requests (EIB InfoDesk - Articles 5.16 and 5.22 of the EIB-TP);

3.10.6 Moreover, the EIB established a dedicated and operationally independent service for the handling of complaints including cases concerning access to information, environmental and social impacts of EIB-financed operations (EIB-CM). In line with article 5.2.3 of the EIB-CM Policy, the EIB-CM consults and exchanges information with the relevant stakeholders, including marginalised communities and vulnerable groups, in order to ensure constructive collaboration.



### *3.11 Pro-active dissemination of opinions of the Commission and Member States*

3.11.1 The EIB shares the EO's Preliminary findings on the opinions of the Commission and Member States, i.e. that these documents do not contain environmental information which should be proactively disseminated in line with Article 4 of the Aarhus Regulation. The EIB further notes that the opinions of the Commission and Member States are recorded in the minutes of the meetings of the Board of Directors where the projects are approved, which are published on the Bank's website.

### *3.12 Pro-active dissemination of information on (i) the positions of specific members of the Board of Directors and/or (ii) how Board's decisions are taken*

3.12.1 The EIB notes the EO's acknowledgment that the minutes of the Board of Directors appear to contain the same amount and quality of information as the previously published "summary of decisions" (paragraph 72 of the Preliminary findings). It is not clear how this observation would demonstrate that the EIB does not proactively disseminate the decisions of the Board of Directors. If anything, this shows that, in the previously published summary decisions, the EIB did adequately transpose the content of the minutes.

3.12.2 With regard to the complainants' claim that minutes of the Board of Directors should contain information on the position defended by specific Board members and how decisions were taken (by unanimity, following a vote etc.), the EIB emphasises that the number and name of the Board member(s) abstaining or voting against are mentioned in the minutes when explicitly requested by the Board member(s). For example, in July 2021, two Board members abstained from voting<sup>9</sup>.

3.12.3 The EIB understands that the EO does not wish to address this claim as part of the present inquiry (paragraph 73) and rather prefers engaging separately with the Bank on the topic. The EIB is available to assist the EO in this respect in order to reach reliable, objective and factual findings.

### *3.13 Timing of the pro-active dissemination of Board's Minutes*

3.13.1 The EIB agrees with the EO's dismissal of the comparison between the EIB decision-making process and legislative procedures suggested by the complainants (see § 3.3.1). As a result, with regard to the reference in paragraph 76 of the Preliminary findings, the EIB wishes to stress that it is a bank and a comparison with policy-makers is misleading.

---

<sup>9</sup> See item 39 of publicly available minutes of the Board of Directors' meeting that took place on 22 July 2021, available at: [ca\\_minutes\\_20210722.pdf \(eib.org\)](https://www.eib.org/press/2021/07/22/minutes), accessed on 21 October 2021.



3.13.2 The EIB does not agree with the EO's statement that Board's Minutes do not contain text in need of any significant exchanges to reach agreement on their formulations and presentation. This depends on the decision requested and namely on the assessment of the legitimate interests that the EIB-TP protects. The EIB must ensure that the EIB-TP exceptions are duly considered before the publication of the Board's Minutes.

3.13.3 The minutes are approved during the next Board meeting, which usually takes place one month later. In the first half of 2021, the EIB published redacted versions of the minutes sometimes two to three days and never more than 10 days after their approval. Taking into account these considerations, the EIB is committed to publish the Board's Minutes at the earliest possible time.

#### **4. EO's practical suggestions**

##### *4.1 Publication of a timeline of milestones of the project cycle in the project page for all projects financed by the EIB*

4.1.1 In line with EIB standards, projects that have a significant effect on the environment should be subject to public consultation under the EIA Directive or EIB standards. That consultation should enable early and effective opportunities for the public to participate in the decision-making process on whether to permit the project.

4.1.2 The EIB requires and monitors that such consultation takes place; however, the public consultation on EIB-financed projects falls within the responsibility of the Project Promoter and not within the responsibility of the EIB.

4.1.3 The EO's suggestion does not seem to pursue the objective of ensuring compliance of EIB's disclosure practices with the Aarhus Regulation, and ultimately, greater environmental transparency of the EIB. On the contrary, it seems to extend considerations, which are valid for permitting authorities, to a financial institution, operating in the market.

4.1.4 However, 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. Subject to legitimate interests to be protected from disclosure, such timeline will feature:

- Date related to project appraisal (date of publication of the project summary) (usually at least three weeks before the Board approval)
- Date of approval by the Board
- Date of signature of the finance contract (and dates of additional finance contracts, if applicable)
- Date of ESCS.



4.1.5 In terms of the email notification option, mentioned by the EO, the EIB is willing to explore this topic and to see what this entails in terms of IT development and practical feasibility of this function as well as its proportionality to the objective, considering that interested parties can monitor the EIB's website.

#### *4.2 Pro-active publication of a list of "source documents" for EIB's online summaries*

4.2.1 As explained in section 3.7 of this Note, the EIB already publishes, for projects having a significant impact on environment, relevant "source documents" from third parties (e.g. EIA reports). Whenever the "source documents" are available online, the link is provided on the EIB Public Register.

4.2.2 It would be useful to understand which other "source documents" the EO refers to with a view to considering whether they contain relevant environmental information, which should – as such – be pro-actively disseminated in line with Article 4 of the Aarhus Regulation.

#### *4.3 Pro-active information on whether projects involve or give rise to "emissions into the environment"*

4.3.1 Source documents as EIA reports indicate whether a project involves or gives rise to emissions into the environment. By pro-actively disseminating these documents on its website, the EIB is already implementing the suggestion of the EO.

#### *4.4 Active and systematic reference to the UNECE Implementation Guide on the Aarhus Convention*

4.4.1 The EIB refers to the information provided in section 2 of this Note with regard to the regulatory framework applying to the EIB in the field of environmental transparency.

4.4.2 Furthermore, the EIB notes that the European Union is one of the Parties to the Aarhus Convention. In this regard, it is worth stressing that the publicly available UNECE Implementation Guide on the Aarhus Convention contains a disclaimer stating, "*The views expressed in the Implementation Guide do not necessarily reflect those of any individual, organization or Government involved at any stage in the preparation of its text. Similarly, the interpretations contained in the text do not necessarily represent the official opinion of any of the Parties to the Convention*". [emphasis added]

4.4.3 Finally, the EIB wishes to draw the EO's attention to the fact that the [EIB Guide to Accessing environmental information](#) already provide readers with a link to the UNECE Implementation Guide.



*4.5 Publication of all documents, including project summaries in (i) English, (ii) the main official language of the country in which the project takes place as well as in (iii) languages of regions that are clearly and specifically significantly affected by the project – insertion of links to online translation tools on each project page*

4.5.1 When a public participation in decision-making process is required, the project promoter/public authority should make information available in a language understandable by the public concerned.

4.5.2 The EIB sees no justification to the economic and administrative burden of translating documents published on the EIB website in line with the Aarhus Regulation into languages other than the original language of the documents. Such translation is unjustified considering that, as acknowledged by the EO, a number of online translation tools are easily and widely accessible to the public. For obvious reasons, the EIB will not use its website to promote the use of an online translation tool over another, nor can it take responsibility for the accuracy of such tools or any impact that may arise from imprecise translation.

*4.6 Publication of the presentation on the EIB's Project Cycle*

4.6.1 The EIB stresses that it already provides information on the EIB project cycle on its website as well as through the number of initiatives described in this Note. In addition, it is noted that the link between the scope of the inquiry and the objective of this suggestion is unclear.

4.6.2 Nevertheless, in the spirit of continuous review and enhancement of its communication with the general public on its activities and mandate, the EIB is thoroughly considering the implementation of the EO's suggestion. The EIB's Communication Department has been tasked to review the presentation on the EIB's Project Cycle provided to the EO's inquiry team with a view to publishing it on the EIB website.

*4.7 Publication of information on locally available avenues to (i) request environmental information and (ii) seek redress in case requests are felt not to be properly handled*

4.7.1 Article 7 of the Aarhus Regulation provides that *"where a Community institution or body receives a request for access to environmental information and where this information is not held by that community institution or body, it shall, as promptly as possible, but within 15 working days at the latest, inform the applicant of the Community institution or body or the public authority within the meaning of Directive 2003/4/EC to which it believes it is possible to apply for the information requested or transfer the request to the relevant Community institution or body or the public authority and inform the applicant accordingly."* [Emphasis added].



4.7.2 The EIB endeavours to provide applicants with the same assistance described by the above-mentioned provision of the Aarhus Regulation also in case of requests concerning operations outside of the EU, despite the fact that the regulatory framework does not require this.

4.7.3 However, the Aarhus Regulation shows that the duty to advise concerns requests for disclosure, and is not related to the proactive dissemination of non-environmental information (as the information referred to by the EO's suggestion), which EU institutions and bodies do not hold. The approach followed by the Aarhus Regulation is consistent with the different dynamics of, respectively, procedures to handle requests for disclosure and pro-active dissemination: the former implies an interaction with the requester and the possibility to better understand the transparency needs of the latter. On the contrary, proactive dissemination is based on automatized, transparency-by design processes, which do not enable EU institutions and bodies to provide a general advice on information, which (i) they may not necessarily hold and (ii) may change over time depending on the domestic regulatory framework of the country of operation.