

Annex 1

Reply to the European Ombudsman's Decision on how the European Investment Bank discloses environmental information in relation to projects it finances directly (case 1065/2020/PB)¹

1. General remarks

1.1 Applicable regulatory framework

1.1.1 In accordance with Articles 308 and 309 of the Treaty on the Functioning of the European Union (EU) and the European Investment Bank (EIB) Statute, the EIB has been established as an EU 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 EU and to help pursue EU objectives, through offering financing to eligible projects. The special traits of the operational and functional autonomy of the EIB within the framework of the EU have been acknowledged by the long-established case law of the Court of Justice of the EU. The EIB's methods, function, products and procedures therefore are those of the banking sector.

1.1.2 In § 2 of the Decision, the European Ombudsman (EO) refers to the Aarhus Convention as “*an international convention that binds the EU, its institutions and the signatory states*”. In this respect, the EIB would like to reiterate that the relevant legal instrument for EU institutions and bodies, such as the EIB, is the Aarhus Regulation², whose objective is to contribute to the implementation of the Aarhus Convention by “*laying down rules to apply the provisions of the Convention to Community institutions and bodies*”, as stipulated in its Article 1.

1.1.3 Furthermore, in relation to the EO statement that: “*The obligation implies, in short, that public institutions publish certain 'environmental information' whenever the activity in question has a significant impact on the environment*”, the EIB would like to recall the explanations provided in §§ 2.3-2.5 of its reply to the EO's Preliminary findings.

1.2 The EIB

1.2.1 In § 4 of her Decision, the EO stresses the link between the first pillar of the Aarhus Regulation (right to access environmental information) and the two other pillars (the rights to public participation in decision-making and access to justice in environmental matters) and seems to suggest that the first pillar is functional to the other two.

1.2.2 The EIB would like to highlight that all pillars of the Aarhus Regulation must be interpreted correctly and applied to their specific contexts. In the case of the EIB, it is important to consistently bear in mind the dual nature of the EIB as a financial institution and an EU body, as pointed above in § 1.1.1.

¹ [Decision on how the European Investment Bank discloses environmental information in relation to projects that it finances directly \(case 1065/2020/PB\) | Decision | European Ombudsman \(europa.eu\)](#)

² Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1367&from=EN>

1.3 *The relationship between the EO and the EIB*

1.3.1 In § 11 of the Decision, the EO states that she has “revised the approach to complaints against the EIB’s refusals to grant public access to its documents” and that “[a]pplicants may now turn to the Ombudsman immediately after a negative decision on a request for review (‘confirmatory application’)”. The EIB has some reservations on the consistency of such approach with the Memorandum of Understanding signed by the EO and the EIB on 9 July 2008, as well as with the 2018 EIB Group Complaints Mechanism Policy and the 2021 EIB Group Transparency Policy (EIB-TP). Since the EO did not participate in the public consultation at the occasion of the recent review of the EIB-TP policy, it was impossible for the EIB to take such an approach into account. The EIB is looking forward to continuing the constructive dialogue with the EO in order to further clarify this issue.

2. EIB’s position on the EO’s suggestions for improvement

2.1 Publish a list of source documents

2.1.1 The EO states that:

“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.”

2.1.2 The above EO suggestion is based on the EO’s assessment reported in §§ 19-24 of the Decision. With regard to it, the EIB would like to clarify that the Bank is already implementing the EO suggestion concerning environmental and social documents, both received and produced by the EIB, as part of its due diligence assessment of projects. More precisely, the EIB’s online project summaries and the EIB Public Register already contain documents from which the environmental information is sourced to prepare the ESDSs. Additionally, the FAQ of the Public Register lists the documents containing environmental information, which are relevant to the Bank’s function and that the EIB proactively discloses. Given that the EIB’s due diligence is a time-spanned process, carried out by different services within the Bank and that the appraisal of a project will vary, depending on a number of factors, including the project type, size and location, it would be impossible for the EIB to provide an exhaustive list of all documents used or consulted by the EIB staff when performing the due diligence.

2.1.3 It is also important to point out that the purpose of the EIB’s due diligence is to assess the adequacy of an operation to receive EIB financing in line with the EIB policies and procedures, and is not meant to document all the requirements allowing a project to be created, developed and operated.

2.1.4 The EIB does not consider that it should publish a *“list of references (titles and dates) of the documents from which it extracts and summarises ‘environmental information’”*, based on the assumption that *“whereas the content of documents can by way of exception be subject to confidentiality, their existence as such is not normally confidential.”* First, as explained above, the EIB already makes available to the public the environmental information relevant to its function. Second, the production of a list of references of documents containing environmental information does not derive from the obligations for proactive publication resulting from Article 4 of the Aarhus Regulation. Third, it cannot be assumed in abstract terms that the information about the existence of certain documents is non-confidential.

2.1.5 Finally, considering that the documents containing environmental information consulted during the EIB’s due diligence and relevant to the EIB function are already published by the EIB and in light of the information contained in § 1.4.2 of the EIB’s reply to the EO’s Preliminary findings (list of appendices of the Appraisal Report), the EIB fails to identify how the public would benefit from the suggested practice.

2.1.6 Based on the above, the EIB does not deem appropriate to implement this general suggestion, which (i) is not required by the applicable regulatory framework and (ii) does not make additional environmental information available to the public.

2.1.7 However, the EIB is continuously improving its policies and procedures and adapting the number of documents that it publishes according to these policies and procedures. Within this context, the EIB remains open to consider any specific suggestion as for additional documents it could publish or list on its online summaries for the genuine interest of the public.

2.2 Flag whenever a project concerns ‘emissions into the environment’

2.2.1 The EO states that:

“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.”

2.2.2 This suggestion is based on the EO’s assessment reported in §§ 33-35 of the Decision. The EIB is unable to determine what the EO understands to be *“a project that concerns emissions into the environment”*. Furthermore, the EIB would like to point out that the Aarhus Regulation does not include an obligation to flag *“a project that concerns emissions into the environment”* when publishing the project summary.

2.2.3 Despite the above-mentioned reasoning and legal challenges, significant emissions in the environment potentially generated by projects are already accounted for in the EIA Reports and the ESDSs, which are systematically published on the project summaries and therefore accessible to the public. Based on the above, the EIB considers this suggestion as already implemented.

2.3 Make a more visible reference to the Aarhus Implementation Guide

2.3.1 The EO states that:

“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 abovementioned guide to accessing environmental information. The EIB should include that guide in the list of project relevant documents.”

2.3.2 As positively acknowledged by the EO, the Guide to Accessing Environmental and Social Information/Documents held by the EIB refers to and contains a link to the UNECE Aarhus Convention Implementation Guide, which could serve as a broader guidance in a more general context.

2.3.3 Following the EO’s suggestion, the EIB has implemented it by publishing the link to the [Guide to Accessing Environmental and Social Information/Documents held by the EIB](#) in the Related Publications section of the Projects pages of the EIB website, together with the already existing links to the EIB Transparency Policy and the Guide to Procurement for Projects Financed by the EIB.

2.3.4 In addition, the EIB has also included a reference to the Implementation Guide in its revised [Guidance note for promoters and partners on the EIB Group Transparency Policy](#).

2.4 Provide translation of project material in language of the country concerned

2.4.1 The EO states that:

“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.”

2.4.2 Taking into consideration the explanations provided in the EIB’s reply to the Preliminary findings (Section 4.5), the EIB sees no justification to the economic and administrative burden of the suggested practice, which would also require quality assurance for translations in every possible language.

2.4.3 In particular, the suggested practice appears unjustified considering that (i) key documents for the public consultation on a given project are already available in local language(s) and (ii), as acknowledged by the EO, a number of online translation tools are easily and widely accessible to the public. The EIB considers that the nature and amount of information available on the online project summaries makes them easily understandable or translatable with publicly available translation tools.

2.4.4 Based on the above, the EIB does not deem necessary nor realistically feasible to implement this suggestion.

2.5 Timely publication of minutes of Directors' meeting

2.5.1 The EO suggests that:

“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.”

2.5.2 This suggestion is based on the EO's assessment reported in §§ 49-54 of the Decision.

2.5.3 As a preliminary remark, the EIB would like to emphasise that in line with the applicable regulatory framework (Article 9 of the EIB Statute, Article 11.a of the EIB Rules of Procedure and Articles 2.2 and 5.4 of the Code of Conduct of the Board of Directors) the independence of the Board members must be preserved. Furthermore, the EIB underlines that the need to protect the independence of the members of the EIB governing bodies seems to be at the basis of the EO's reasoning in her Decision on case 1252/2020 (see § 13), where the EO recognized that in concrete cases the publication of the minutes may open the way to undue external pressure on the individual members of the MC.

2.5.4 Members of the public are provided with the opportunity to feed the EIB services with information on the operations presented to the EIB Governing Bodies and this opportunity is further enhanced by the implementation of a number of suggestions made by the EO in the present case (e.g. the time-line of major project milestones). This should not however alter or even conflict with a key element of EIB governance, i.e. the independence of the Board members, as resulting from the applicable regulatory framework.

2.5.5 Furthermore, and without prejudice to the above, the EIB stresses that, because of the very nature of minutes (i.e. an account of discussions/decisions having already taken place) it is not clear how their earlier publication would positively affect the public's capability to influence the already held or respectively taken discussions or decisions of the Board.

2.5.6 The EIB notes that, irrespective of when the minutes of a particular meeting are published, external stakeholders have the opportunity to express their views to the Bank, including to the Board, on items that are on the Board's agenda, the latter being disclosed on the EIB's website, before the relevant meeting takes place. The EIB also notes that the approval of operations by the Board of Directors is also recorded on the EIB's website well before the approval and publication of the meeting minutes, allowing the public to provide input on such decisions at an early stage. The EIB and its Governing Bodies are committed to actively encourage stakeholder's input into the EIB's policies and practices and are convinced that being open increases the Bank's accountability towards all of its stakeholders. As part of this commitment the EIB regularly engages with civil society and other members of the public in a variety of ways including the Annual Board Seminar with Civil Society Organisations, the public consultations on key EIB policies, and numerous other meetings and events allowing the Bank to benefit from the feedback and ideas from all stakeholders.

2.5.7 We would like also to point that according to a Board's decision the minutes are approved “*en séance*”, that is as an agenda item in the following meeting rather than via a tacit (or e-voting) procedure. The current approach enables the Board members to fully consider changes proposed and exchange with the other Board members, thus ensuring that the endorsement is based on a joint and comprehensive understanding of the text submitted for approval. In addition, the timing between their approval and public disclosure has been reduced significantly in the past months, also because of the revision of the EIB internal procedures.

2.5.8 Based on the explanations provided in § 3.13 of the EIB's reply to the EO's Preliminary findings, as well as on the above-considerations, the EIB does not deem appropriate nor feasible to implement this suggestion.

2.6 Systematically publish information about the existence of projects

2.6.1 The EO states that:

“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.”

2.6.2 The EIB regrets that it was not given the opportunity to provide its views on this aspect before the EO's Decision. In its previous correspondence with the EO and in §§ 1.1.1 and 1.2.2 above, the EIB has already stressed the EIB's dual nature as a financial institution and an EU body, as established by the Treaties.

2.6.3 The EIB would like to clarify that it did not state that it does not always publish information on new loan projects, but indicated that in some cases, the timing of such publication may vary on the basis of the provisions of the EIB-TP. Information on all of the projects financed by the EIB is at the end published.

2.6.4 The EIB already applies, to the extent possible, the EO's suggestion by temporarily removing some confidential information from online project summaries when duly justified under the exceptions of the EIB-TP. However, in limited cases, such as for certain listed companies or some RDI projects, the mere existence of an EIB loan request before its approval or its signature, could undermine the protection of commercial interests of natural or legal persons. These operations are nevertheless always published after signature. In line with the EIB-TP, the EIB can publish information on an operation being considered for financing once such information (including information relating to its nature and/or location) can be disclosed without undermining legitimate interests protected by the EIB-TP.

2.6.5 Based on the above, the EIB considers that it does already implement the EO's suggestion, to the extent possible considering the specific confidentiality reasons as assessed by the EIB in line with the EIB-TP.

3. Further considerations on the EO's assessment

3.1 Systematic online publication of documents containing factual information on projects

3.1.1 Regarding §§ 13-18 of the EO's Decision, the EIB would like to reiterate clarifications on the ESDS provided in its reply to the EO's Preliminary findings. As acknowledged by the EO's Decision, the development of the ESDS is the result of a previous effort by the EIB to structure its internal documents, in particular, its Appraisal Report, to ensure prompt publication of the documentation. The ESDS precisely contains all the relevant non-confidential environmental information concerning projects considered for financing and is resulting from the EIB's due diligence. It is presented to the public in context and informs the public of which environmental information the EIB considers important for its financing decisions. The EIB would like to stress again that the ESDS is not to be regarded as a derivative document/summary but

as a primary source document reflecting in a comprehensive way the EIB's environmental and social due diligence.

3.1.2 Regarding the submission of documents by third parties to the EIB, it is important to point out that these documents (for example, a business plan or a feasibility study), may greatly vary from one project to the other, and do not necessarily always follow a pre-defined format and structure under the control of the EIB. It is also important to clarify that, in the majority of cases, these documents are not prepared solely for the purpose of obtaining an EIB loan, and forcing EIB potential partners to restructure them to separate "*deliberative content*" from "*factual information*" as recommended by the EO, would impose an unreasonable and unnecessary burden to them. Furthermore, it is unclear how the EIB partners would be able to clearly identify what constitutes "*deliberative*" and "*factual*" information, noting that "*factual*" information may also need to be legitimately protected from disclosure (for example costs or financial returns associated to a project).

3.1.3 Furthermore, it should be noted that the "*deliberative nature*" of certain information is not the only reason that the EIB may have to withhold information. In this vein, the EIB would like also to reiterate that the Aarhus Regulation provides for organisation and publication of certain environmental information and does not distinguish between factual and non-factual or between deliberative and non-deliberative information.

3.1.4 The EIB takes note of the EO's intention to establish contacts with the Aarhus Convention Compliance Committee to exchange further on these matters. In this regard, the EIB understands that said contacts would happen with the involvement of the European Commission, considering its role in representing the European Union in its relationship with the Aarhus Convention Secretariat and bodies.

3.2 Publication of monitoring reports

3.2.1 Regarding §§ 25-28 of the EO's Decision, the EIB would like to clarify that monitoring reports do not necessarily contain environmental information. Considering (i) the explanations provided to the EO in the EIB's reply to her Preliminary findings (see Section 3.10) and (ii) the fact that the public is able to raise potential concerns about environmental and/or social impacts of EIB-financed projects under the current situation, as proven by the online Register of the EIB-CM, the EIB does not find the EO's statement that the EIB is "*not living up to the ambitious transparency objectives it has set itself*" to be substantiated.

4. Evolution of EIB's practices

4.1 Providing a timeline for projects online and automatized notification

4.1.1 The EIB is pleased to inform the EO that according to § 4.1.4 of its reply to the EO Preliminary findings, the EIB has developed and published on its website a user-friendly time-line of major milestones of the project cycle. The different stages of the project cycle: (i) under appraisal, (ii) approved and (iii) signed are reflected by the timeline and respective dates of the publication of the project summary and the signature of the finance contract, as well as related documents - the ESDS and the ESCS - are also presented. The time-line is available since 25 September 2022 for all newly published project summaries.

4.1.2 Concerning the possibility of automatized notification, the EIB has assessed the complexity of the set-up and maintenance of a system providing individual subscriptions for email notifications of status changes for the thousands of EIB projects summaries published on its website. In this regard, the EIB would like to emphasise that its website already provides for an [RSS news feed](#), allowing users to access updates to the

EIB website and keep track of new information posted on a number of topics, including EIB's lending operations.

4.2 Publication of detailed information about the project lifecycle

4.2.1 The EIB is pleased to confirm that, according to § 4.6.2 of its reply to the EO Preliminary findings, updated and comprehensive information about the project lifecycle, based on the EIB's presentation to the EO, has been published by the EIB on its website at the following link: <https://www.eib.org/en/projects/cycle/index.htm>.

Annex 2

Reply to the European Ombudsman's Decision on how the European Investment Bank discloses environmental information about projects it finances through intermediaries (case 1251/2020/PB)¹

1. General remarks

1.1. Applicable regulatory framework and the EIB

1.1.1 In accordance with Articles 308 and 309 of the Treaty on the Functioning of the European Union (EU) and the European Investment Bank (EIB) Statute, the EIB has been established as an EU 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 EU 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 EU have been acknowledged by the long-established case-law of the Court of Justice of the European Union (CJEU). The EIB's methods, function, products and procedures therefore are those of the banking sector.

1.1.2 In § 2 of the Decision, the European Ombudsman (EO) refers to the Aarhus Convention as “*an international convention that binds the EU, its institutions and the signatory states*”. In this respect, the EIB would like to reiterate that the relevant legal instrument for EU institutions and bodies is the Aarhus Regulation², whose objective is to contribute to the implementation of the Aarhus Convention by “*laying down rules to apply the provisions of the Convention to Community institutions and bodies*”, as stipulated in its Article 1.

1.1.3 Furthermore, in relation to the EO statement that: “[*t*]he obligation implies, in short, that public institutions publish certain 'environmental information' whenever the activity in question has a significant impact on the environment.”, the EIB would like to recall the explanations provided in §§ 2.3 - 2.5 of the December 2021 Reply from the EIB to the EO's Preliminary findings³.

1.1.4 In § 4 of the Decision, the EO stresses the link between the first pillar of the Aarhus Regulation (right to access environmental information) and the two other pillars (the rights to public participation in decision-making and access to justice in environmental matters) and seems to suggest that the first pillar is functional to the other two.

1.1.5 The EIB would like to highlight that all pillars of the Aarhus Regulation must be interpreted correctly and applied to their specific contexts. In the case of the EIB, it is important to consistently bear in mind the dual nature of the EIB as a financial institution and an EU body.

¹ Available at: [Decision on how the European Investment Bank discloses environmental information about projects it finances through intermediaries \(case 1251/2020/PB\) | Decision | European Ombudsman \(europa.eu\)](#), accessed on 30 May 2022.

² Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1367&from=EN>, accessed on 3 June 2022.

³ Available at: [Reply from the European Investment Bank \(EIB\) to the European Ombudsman's Preliminary findings on how the European Investment Bank discloses environmental information in relation to projects it finances through intermediaries \(case 1251/2020/PB\) | Correspondence | European Ombudsman \(europa.eu\)](#), accessed on 3 June 2022.

1.2. Recently approved EIB Policies

1.2.1 As indicated in § 8 of the Decision, after the EO's opening of the inquiry and her Preliminary findings, the EIB Governing bodies approved the following:

- Revised EIB Group Environmental and Social Policy⁴ and Revised EIB Environmental and Social Standards⁵, including the new Standard dedicated to intermediated finance.
- Revised EIB Group Transparency Policy (EIB-TP)⁶.

These documents were not taken into account by the EO in her Decision. Nevertheless, this Reply also relies on these documents.

1.3. The relationship between the EO and the EIB

1.3.1 § 8 of the Decision states that the EO has “revised the approach to complaints against the EIB's refusals to grant public access to its documents” and that “[a]pplicants may now turn to the [EO] immediately after a negative decision on a request for review (‘confirmatory application’)”. The EIB has some reservations on the consistency of such approach with the Memorandum of Understanding signed by the EO and the EIB on 9 July 2008, as well as with the 2018 EIB Group Complaints Mechanism Policy and the 2021 EIB-TP. Since the EO did not participate in the public consultation at the occasion of the recent review of the EIB-TP policy, it was impossible for the EIB to take such an approach into account. The EIB is looking forward to continuing the constructive dialogue with the EO in order to further clarify this issue.

2. EIB's position on the EO's assessment

2.1. Publication of information and documents concerning larger projects

2.1.1 In § 11 of the Decision, the EO “suggested that the EIB introduce an improved standard approach to larger projects (total sub-project's costs > EUR 25m) for which it normally holds relevant ‘environmental information’.”

2.1.2 As indicated in the footnote 7 of the Decision, these projects are set out in § 1.6.3 of the December 2021 Reply from the EIB to the EO's Preliminary findings. For example, in case of multi-beneficiary intermediated loans (MBILs) for large sub-projects, the EIB reviews the environmental, climate and social (ECS) risks and impacts of the relevant large sub-projects⁷. In case of large sub-projects, part of framework loans (FLs) intermediated through financial institutions, the EIB analyses ECS issues ex ante⁸. The financial intermediaries (FIs) are exclusively responsible for assessment, compliance and monitoring of the sub-projects they finance in case of Funds⁹.

2.1.3 The revised EIB-TP contains a commitment to publish on the EIB's website project summaries of the sub-projects financed through FIs with a total project cost greater than EUR 50m¹⁰. The February 2022 EIB Group Environmental and Social Policy requires the EIB to, where appropriate and consistent with the EIB-TP, ensure that the ECS information which it holds related to sub-projects with high ECS risks is made available to the public¹¹ (for more information on this, see § 3.1.2 of this Reply).

⁴ February 2022 EIB Group Environmental and Social Policy, available at: [The EIB Group Environmental and Social Policy](#), accessed on 30 May 2022.

⁵ February 2022 EIB Environmental and Social Standards, available at: [EIB Environmental and Social Standards](#), accessed on 30 May 2022.

⁶ November 2021 EIB Group Transparency Policy, available at: [EIB Group Transparency Policy](#), accessed on 30 May 2022.

⁷ § 1.6.3 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

⁸ § 1.6.3 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

⁹ § 1.6.3 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

¹⁰ Article 4.10 of the November 2021 EIB Group Transparency Policy.

¹¹ § 4.20 of the February 2022 EIB Group Environmental and Social Policy.

2.1.4 In respect to other large sub-projects, the EIB draws the EO's attention the November 2021 Reply from the EIB to the EO's Preliminary findings¹² and 2022 Reply in the 1065/2020/PB case.

2.2 EIB's approach to checking know-how and experience of FIs

2.2.1 In § 14 of the Decision, the EO noted that "*the EIB considers that its current practices suffice [and that it explained] how it carefully checks that [FIs] have the necessary know-how and experience to respect environmental rules and that it trusts that they will then do so.*"

2.2.2 The EIB would like to clarify that depending on the type of intermediated operation, the EIB reviews the ECS performance of the FIs in line with the EIB's risk based approach. The EIB also does not just "trust" that the FIs will respect environmental rules – each FI and the final beneficiaries are contractually required to comply in all material respects with the laws to which it or the sub-project are subject, including environmental and social laws.

2.3 Interaction with FIs

2.3.1 In § 15 of the Decision, the EO noted that it is unclear whether the EIB pointed to a market concern, more specifically, whether "*some [FIs] 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 EO concluded that she cannot "*conduct a detailed assessment on this matter given that it has not in any way been substantiated.*"

2.3.2 The EIB would like to clarify that it sees a risk that going beyond the requirements set in the applicable regulatory framework could hamper the EIB in attaining its specific financial mission (see § 1.1.1 of this Reply).

3. EIB's position on the EO's suggestions

3.1 *Publication of name, place and nature of smaller projects (total sub-project's costs < EUR 25m) in the form of an online list.*

3.1.1 The EO suggested that if the EIB already has access to consolidated information regarding the name, place and nature of smaller projects, the EIB should publish this, potentially in the form of a list online. If the EIB does not have access to it, the EIB could ask FIs 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.

3.1.2 As indicated in the December 2021 Reply from the EIB to the EO's Preliminary findings, the EIB already proactively publishes project summaries of its intermediated operations and a list of its FIs on the EIB website¹³, thus ensuring transparency of the EIB operations. Moreover, the February 2022 EIB Group Environmental and Social Policy requires the EIB to, where appropriate and consistent with its EIB-TP, ensure that the ECS information which it holds related to sub-projects with high ECS risks is made available to the public¹⁴, thus ensuring transparency of the sub-projects financed by the FIs. High risk sub-projects are those that are likely to have significant environmental, climate and/or social impacts and risks and require the preparation of an Environmental Impact Assessment (EIA) or Environmental and Social Impact Assessment (ESIA) report due to: i) national and/or EU Law requirements; or ii)

¹² November 2021 Reply from the EIB to the EO's Preliminary findings on how the EIB discloses environmental information in relation to projects it finances directly (case 1065/2020/PB), available at: [Reply from the European Investment Bank \(EIB\) to the European Ombudsman's Preliminary findings on how the European Investment Bank discloses environmental information in relation to projects it finances directly | Correspondence | European Ombudsman \(europa.eu\)](#), accessed on 5 August 2022.

¹³ § 3.3.3 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

¹⁴ § 4.20 of the February 2022 EIB Group Environmental and Social Policy.

determination made by the competent authorities in the host country and/or by FIs on a case-by case basis¹⁵.

3.1.3 The environmental information related to high-risk projects should also be available to the public through other means. In the countries parties to the Aarhus Convention¹⁶, including the EU, this information must be made available and due process must be carried out, including public consultation and stakeholder engagement, for types of activities listed in Annex I of the Convention (EIA activities) prior to the start of the project. Such information would also include the name, place and nature of a sub-project. In the rest of the world, the FIs must require final beneficiaries to ensure that rights-holders have access to meaningful stakeholder engagement taking into consideration the sub-projects' size, nature, socioeconomic context, location and sector sensitivity to ECS impacts and risks¹⁷. The FIs must also require that sub-projects are implemented in line with the applicable national legislation¹⁸.

3.1.4 Going beyond the requirements set out in §§ 3.1.2 and 3.1.3 of this Reply is not legally and practically feasible. As indicated in the December 2021 Reply from the EIB to the EO's Preliminary findings, the name, place and nature of smaller projects does not fall within the concept of "environmental information" to be actively disseminated under the Aarhus Regulation and the EIB-TP¹⁹. Also the considerable number of yearly allocations (more than 71 000 in 2020)²⁰ would make it not feasible for the EIB to ensure that disclosure of name, place and nature of all smaller projects is in line with the EIB-TP, applicable banking and data privacy laws, as well as with the FI's contractual obligations.

3.1.5 In addition, as indicated in the December 2021 Reply from the EIB to the EO's Preliminary findings, the final financing decision is known to the EIB only at the end of the allocation period established for each intermediated operation²¹. An allocation period can span over several years after the signature of the EIB operation with the FI. For example, if the intermediated operation so requires²², the EIB needs to review and approve the FI's request for allocation of EIB support to a sub-project²³. Ultimately, the FIs may decide not to finance a sub-project, although the EIB had pre-approved allocation of its support to it, and informs the EIB of its decision at a later stage²⁴.

3.1.6 Based on the above considerations, the EIB is not in a position to implement the EO's suggestion to publish the name, place and nature of smaller sub-projects.

3.2. Publication - with revisions or updates if necessary – of the rules and/or guidelines that the EIB applies to determine whether a project is likely to have a 'significant impact on the environment'.

3.2.1 The EO suggested that 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'.

3.2.2 As indicated in the December 2021 Reply from the EIB to the EO's Preliminary findings, the definitions, interpretations and classifications used by the EIB in the assessment of the projects' impact on environment stem from the relevant sources of the EU acquis, notably the EIA Directive and the case law of the CJEU²⁵.

¹⁵ Footnote 12 in Standard 11 on Intermediated Finance of the EIB Environmental and Social Standards.

¹⁶ [UNTC](#), accessed on 31 May 2022.

¹⁷ § 9.b of Standard 11 on Intermediated Finance of February 2022 EIB Environmental and Social Standards.

¹⁸ § 15 of Standard 11 on Intermediated Finance of February 2022 EIB Environmental and Social Standards.

¹⁹ § 3.3.1 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

²⁰ § 3.3.2 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

²¹ § 3.3.3 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

²² § 16 of Standard 11 on Intermediated Finance of February 2022 EIB Environmental and Social Standards.

²³ § 3.3.3 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

²⁴ § 3.3.3 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

²⁵ § 4.3.5, indent 3 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

3.2.3 Furthermore, the publicly available Standard 11 on intermediated finance refers to different levels of ECS risks and defines sub-projects with high ECS risks. As indicated in § 3.1.2 of this Reply, high risk sub-projects are defined as sub-projects that are likely to have significant environmental, climate and/or social impacts and risks and require the preparation of EIA or ESIA report due to: i) national and/or EU Law requirements; or ii) determination made by the competent authorities in the host country and/or by FIs on a case-by case basis²⁶. This is in line with the definitions for other types of operations²⁷.

3.2.4 At the moment, the EIB is preparing procedures and guidance documents in relation to the EIB Group Environmental and Social Policy and the EIB Environmental and Social Standards. The EIB will take into account the suggestion of the EO when finalising such documents.

4. Further evolution of EIB's practices of proactive dissemination of environmental information

4.1 The EIB is pleased to inform the EO that according to § 4.3.7 of the December 2021 Reply from the EIB to the EO's Preliminary findings, the 2022 transparency report has a dedicated section on transparency in on intermediated financing.

4.2 Finally, with regard to training for FIs, as indicated in the December 2021 Reply from the EIB to the EO's Preliminary findings, the EIB envisages to implement the EO's suggestion as well as similar recommendations of the EIB-CM in case SG/G/2019/01²⁸. For example, the EIB will deliver general training sessions on Standard 11. At the moment, the EIB is considering how to further the implementation of the recommendation.

²⁶ Footnote 12 of the February 2022 EIB Environmental and Social Standards.

²⁷ § 4.18 of the February 2022 EIB Group Environmental and Social Policy.

²⁸ § 4.3.3 of the December 2021 Reply from the EIB to the EO's Preliminary findings.

Annex 3

The European Investment Bank's Reply to the European Ombudsman's "Decision on the refusal of the European Investment Bank to grant public access to the minutes of Management Committee meetings" (case 1252/2020/PB)¹

1. General remarks

1.1 *The scope of (i) the request for access to minutes of the Management Committee meetings and of (ii) the inquiry of the EO*

1.1.1 The request for access to minutes of the meetings of the EIB Management Committee (MC), submitted by ClientEarth (the complainant) to the EIB in July 2018, concerned a number of documents, all related to the Curtis Biomass project (the Project).

1.1.2 In the view of the EIB, the wording of the EO's Proposal for Solution ("Proposal")² stressed that the request for access to the MC meetings' minutes was based on the complainant's interest in obtaining information on the EIB's deliberations concerning the Project. It also suggested that the scope of the EO's inquiry concerned the refusal to disclose the parts of the MC meetings' minutes concerning the Project³.

1.1.3 This understanding is also confirmed by the wording of the EO's Decision and in particular §16 according to which "[...] *any further disclosure of the documents at this point in time would be unlikely to respond to any outstanding information need [...]*". The above statement appears to be referred to the information concerning the Curtis Biomass Project, considering the information disclosed by the EIB (i) directly to the complainant as part of its reply to the original request⁴ and (ii) indirectly, as part of its decision to accept the EO's Proposal and provide partial disclosure of the MC meetings' minutes.

1.2 *The scope of the European Ombudsman's conclusions*

1.2.1 The present inquiry concerns the EIB's decision to refuse disclosure to a specific set of minutes of MC meetings. However, the EO's Decision, and in particular §16 of the assessment as well as the conclusions, refer more generally to the "EIB's approach to similar cases", meaning the generality of the cases where the EIB deals with requests for public access to minutes of the EIB MC.

1.2.2 The EIB notes that the EO Decision does not provide elements to explain how the inquiry in this specific case led the EO to issue conclusions on an alleged EIB's general approach when dealing with requests for access to this type of documents. It is worth recalling that this is the first case concerning a request for disclosure of MC meetings' minutes handled by the EO.

¹ Available at: [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 | European Ombudsman \(europa.eu\)](#), accessed on 9 June 2022.

² See §2 of the Proposal: "A civil society organisation had requested access to those minutes to obtain information on the EIB's deliberations on possible co-financing of a biomass power generation plant in Spain ('Curtis Biomass Power Generation Plant')".

³ See §17 of the Proposal: "The Ombudsman has not, for instance, identified in these minutes "risk pricing, securities and guarantees" or "spread curves". As for "interest rates", one sees formulations that refer to non-specific rates (such as the rate applicable at a date of the contract signature). As such, these would seem to be neutral and objective as opposed to contract-specific and contractually negotiated rates **for the project in question**" [emphasis added]. See also footnote 10: "**Taking as an example the specific project of particular interest to the complainants here concerned**, it appears that the EIB published the project information on 30 May 2018, i.e. more than one year prior to the EIB's decision on the complainants' confirmatory application. <https://www.eib.org/en/registers/all/8218085>" [emphasis added].

⁴ See in particular §2.1.2 of this Annex.

1.2.3 Based on the above, the EIB takes this opportunity to reiterate its statement in par. 1.5 of its reply to the EO's Proposal⁵: the EIB's approach to handling requests for access to MC meetings' minutes is to undertake a case-by-case assessment in line with the EIB Group Transparency Policy (EIB-TP).

2. EIB's position on the EO's assessment

2.1 *The alleged failure to state whether the EIB could have disclosed the requested information at the time of the request*

2.1.1 According to §6 of the Decision, "*the EIB regrettably did not state whether it could have disclosed that information [i.e. information on the Curtis project] at the time of the document request*".

2.1.2 The EIB would like to emphasise that, rather than disclosing the documents at the time of the request, in its initial response of 22 August 2018, the EIB provided the complainant with a description of the information contained in these minutes falling within the scope of the request⁶. This decision was based on (i) the fact that the minutes did not contain any environmental information, which was the object of the initial request of the complainant and (ii) the fact that disclosing a redacted version of the minutes would not have resulted in the disclosure of any meaningful additional information on the Project.

2.1.3 In her Proposal, the EO requested the EIB to review its reasoning for not giving access to the MC minutes, taking into consideration the time that has passed since the EIB's decision was taken. The EIB accepted the EO's Proposal and carried out a review of its previous reasoning. The EO's Proposal did not require the EIB to state whether it could have disclosed the requested information from the minutes related to the Project at the time of the request.

2.1.4 The EIB understands that EO's Proposals are forward-looking communications, meant to find a constructive solution to a complaint. Based on EIB's understanding of the purpose of EO's Proposals in general as well as on the very text of the specific Proposal in question, the EIB could not anticipate that the EO expected such information from the EIB. In fact, the EIB simply followed the EO's Proposal.

2.2 *The alleged failure to state the reasons for the redactions*

2.2.1 In §7 of the Decision, the EO states that "*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.*"

2.2.2 The EIB would like to clarify that, in response to the EO's Proposal, it exclusively reassessed the parts of the minutes that concerned the Project because this appeared to be the information the complainant was interested in as well as the subject of the EO's inquiry/Proposal. See in this respect §1.1 of this Annex.

2.2.3 Furthermore, the EIB would like to clarify why, when accepting the EO's Proposal and providing partial disclosure of the minutes, the EIB did not consider it necessary to re-state the reasons for redacting certain parts of them. These reasons had already been provided by the EIB in its responses

⁵ Available at: [Reply from the European Investment Bank \(EIB\) to the solution proposal of the European Ombudsman on refusal of the European Investment Bank to grant public access to the minutes of meetings of its Management Committee concerning a biomass project in Spain | Correspondence | European Ombudsman \(europa.eu\)](#), accessed on 13 June 2022.

⁶ Inter alia, the EIB initial response indicated that "...*The minutes of the meeting provide a short description of the financing operation and record the MC approval, together with comments on the pricing and other financial aspects. This document does not contain any environmental information and therefore falls outside of the scope of your request. The MC also considered this financing operation in other instances, without the financing operation being on the agenda. In these cases, the minutes simply provide the name of the project and record the MC's approval. They do not contain any environmental information and therefore fall outside of the scope of your request.*"

to the complainant as well as in §§ 2.1 (Personal data protection) and 2.2 (Commercial interests) of the EIB's reply to the EO's Proposal.

2.3 *The alleged failure to provide valid reasons for refusing disclosure*

2.3.1 In §9 of her Decision, the EO states that “[t]he EIB has still not provided valid reasons for refusing disclosure based on the content of the documents (which the Ombudsman inquiry team reviewed).”

2.3.2 The EIB would like to point out that the EIB response to the complainant's initial and confirmatory applications did provide extensive reasons for refusing such disclosure⁷, and that the EIB reply to the EO's Proposal contained more than two pages further complementing these reasons. The EIB considers that these explanations were as specific as possible, taking into account the difficulties mentioned in §11 of the EO's Decision, but clearly went beyond “*merely citing an exception*” or referring to “*obvious facts*” as suggested in §12 of the EO's Decision.

2.3.3 The EIB notes that, with the exception of the paragraphs about the internal decision-making process, the EO's Decision does not explain why the detailed reasons provided by the EIB in (i) its responses to the complainant and (ii) its response to the EO's Proposal have not been taken into account by the EO or have not been considered as valid.

2.4 *Explanations on and use of the decision-making process exception*

2.4.1 The EIB would like to clarify that, in its response to the complainant's confirmatory application, the EIB did explain why the disclosure of the minutes could undermine the EIB's decision-making process, and did not simply state, to quote §13 of the EO's Decision, that “*minutes of a meeting are intended for internal use*”⁸.

2.4.2 The EIB takes note of the EO's assessment that, in a specific context, the fact that disclosure of minutes could lead to inappropriate external pressure being exercised on individual members of the meeting concerned, may be a valid reason for not disclosing such minutes. In this regard, the EIB wishes to underline that it pays due attention to the effectiveness and integrity of its decision-making processes.

2.4.3 The EIB considers, however, that the obligation to provide a statement of reasons should not be extended to impose on EU administration the obligation to provide examples of past experiences where disclosure of information had actually created damage to protected interests. It is exactly in view of avoiding a reasonable foreseeable harmful situation (i.e. that the protected interest is undermined or seriously undermined, depending on the legitimate interest concerned) that EIB may invoke the exceptions established in the EIB-TP. The validity of the use of the exceptions should not be evaluated on the basis of experience, as §13 of the Decision seems to suggest.

2.4.4 The EIB can understand potential concerns about the validity/adequacy of its own assessment in this case, and welcomes suggestions for improvement. However, it fails to understand how the EO “*could not conclude that the EIB had conducted a concrete assessment*” of the requested documents, as indicated in §15 of the EO's Decision. On the contrary, the various responses and clarifications provided to the complainant (as part of the request for access) and to the EO (as part of her inquiry) show that the EIB conducted a concrete assessment.

⁷ The reasons for the exceptions are laid down in detailed paragraphs of the EIB's reply to the confirmatory application (see in particular, in pages 6-8 of the EIB's reply to the confirmatory application).

⁸ In particular, the EIB also indicated that: “...*Their disclosure would reveal the information, considerations and opinions examined by or expressed within the MC, or exchanged between the latter and the EIB's services. Such disclosure would deprive the EIB's governance and services of the necessary 'space to think' in which the individuals and bodies involved trust they can communicate freely, express frank professional judgement and deliberate independently.*”

3. EIB's position on the EO's Conclusions

3.1 As of the time of issuance of the EIB's response to the EO's Decision, the EIB has not received any other request for access to minutes of the Management Committee meetings in relation to a particular project. Nor has the EIB been able to identify any similar request in the past, prior to this case.

3.2 Should the EIB receive a request in the future to disclose project-related details in the minutes of MC meetings, it will carry out its case-by-case assessment under the EIB-TP. The EIB will therefore take into account (i) the comments received from the EO, to the extent that they are relevant to the request in question, as well as (ii) the specificities of the particular operation including commercial sensitivities linked to the information requested. In case of a decision of non-disclosure and in line with art. 5.25 of the EIB-TP, the Bank will explain the basis for its decision to the applicant.