European Investment Bank

Dr Werner Hoyer
President

Ms Emily O'Reilly
The European Ombudsman
1, avenue du Président Robert Schuman
F - 67001 Strasbourg
FRANCE

Luxembourg, 24 May 2017

Complaint Reference: 1316/2016/AB

Dear Ms O'Reilly,

I refer to your letter of 27 February 2017 informing me of your decision to launch an inquiry into the complaint lodged on 6 September 2016 by Client Earth, CEE Bankwatch Network and Counter Balance (hereinafter, the complainants) against the European Investment Bank (EIB). The complaint concerns (i) the compatibility of the EIB's Transparency Policy with the Aarhus Convention, the Aarhus Regulation and Regulation 1049/2001 regarding public access to documents and (ii) the fact that the EIB had declared inadmissible most of the original complaint the complainants lodged with the EIB Complaints on 16 February 2016.

I herewith forward you copy of the letter of the EIB Secretary General addressing the allegations on the compatibility of the EIB's Transparency Policy with the applicable regulatory framework (Annex II) and I convey the EIB's position on the rationale behind the decision on admissibility and its communication to the complainants (Annex I).

I trust that the enclosed explanations are satisfactory and I remain at your disposal for any further information.

Yours sincerely,

Enclosures (2)

98-100, boulevard Konrad Adenauer L-2950 Luxembourg +352 4379-94464 +352 4379-64474 w.hoyer@eib.org www.eib.org

Annex I - EIB's position on complaint 1316/2016/AB

1. Background information

On 16 February 2016 Client Earth, CEE Bankwatch Network and Counter Balance (hereinafter, the complainants) submitted a complaint to the European Investment Bank (EIB) regarding the alleged non-compliance of the EIB Group Transparency Policy (EIB-TP), approved by the EIB Board of Directors in 2015, with EU and international law on access to information as well as its implementation by the Bank.

On 1 March 2016, the EIB Complaints Mechanism (EIB-CM) acknowledged receipt of the complaint, and on 10 June 2016, the EIB-CM informed the complainants that, on the basis of the provisions of the EIB-CM Principles, Terms of Reference and Rules of Procedure, it was not in the position to deal with the allegations concerning the legality of the EIB-TP, noting that the decision to file those allegations as inadmissible would not affect the on-going inquiry into the allegations regarding the implementation of the EIB-TP contained in their complaint.

On 6 September 2016 the complainants submitted a complaint to the European Ombudsman (EO), which was communicated to the EIB on 27 February 2017; on that occasion, the EO requested the EIB:

1. To clarify its reasoning and explain why article 3.1 of the Principles and Articles 1.1, 4.2 c) and 4.2 g) of the Terms of Reference render the complaint inadmissible.
2. To clarify its current rules and practices with regard to the timing of the communication of the outcome of the admissibility check.
3. To comment on the complainants' understanding that the acknowledgment of receipt sent on 1st of March 2016, conveyed that the complaint was admissible.
4. To indicate why the EIB did not address the complainants' concerns about the Transparency Policy outside the scope of the EIB-CM, for example by referring their letter to another department;
5. To reply to the complainant's concern in relation to the compatibility of the EIB Group's Transparency Policy with the Aarhus Convention, the Aarhus Regulation and Regulation 1049/2001 (except for the allegations still under the examination by the EIB-CM).

The present response does not cover the allegations regarding the compliance of the EIB's activities with the EIB's policy framework set out under point 1.2.2 of the complaint submitted to the EIB-CM, which fall under its inquiry and will be subject to a dedicated Conclusions Report.

2. The decision on admissibility and its communication to the complainants

The present document addresses points 1 to 4 of the EO's request and is intended to clarify the rules and practices of the EIB and its CM when it comes to the decision and communication of the (in)admissibility of complaints submitted to the EIB-CM. Point 5 is addressed in Annex II – Letter from EIB Secretary General to the complainants.

2.1 The rationale behind the EIB's decision to consider the complaint as partially inadmissible

On 1 March 2016, the EIB-CM acknowledged receipt of the complaint and informed the complainants of the launch of a review into the case as well as of the date by which the Bank's reply could be expected. Furthermore, following internal consultation with the EIB concerned services, in its letter of 10 June 2016, the EIB-CM informed the complainants that the EIB-CM is not in the position to deal with the allegations concerning the legality of the EIB-TP and noting that the EIB's decision to file those allegations as inadmissible would not affect the on-going inquiry into the allegations regarding the implementation of the EIB-TP, i.e. the EIB's activities which are alleged not to be in compliance with the EIB Group's policy framework under point 1.2.2 of the complaint.

In its reasoning on the partial inadmissibility of the case, the EIB referred to article 3.1 of the Principles and Articles 1.1 , 4.2 c) and 4.2 g) of Section III – Terms of Reference of the EIB Complaints Mechanism.

The EIB observed that the EIB-CM operates within the policy framework of the EIB Group; this implies that a review of the legality of the above-mentioned framework (including the Transparency Policy) does not fall within the Terms of Reference of the EIB-CM, as the latter's inquiries concern EIB Group's "activities" rather than the policy framework established by EIB Governing Bodies (art. 1.1 of ToR).

According to its Principles (art. 3.1), the function of the EIB-CM is to evaluate and report compliance with the EIB policy framework; the review of the legality of Policies adopted by the EIB Governing Bodies falls outside the scope of the administrative review of EIB Group's activities performed by the EIB-CM. The EIB-CM Terms of Reference (article 4.2 c) therefore restricts the review of the EIB-CM to compliance "with" the policy framework and does not include also compliance of the policy framework as such. Article 4.2 g) recalls that the recommendations of the EIB-CM may concern possible improvements to existing procedures; this is understood as a supplement to any proposed operational corrective actions or stand-alone measure and/or further exclude possible improvements of EIB Group's policies approved by the EIB Governing Bodies.

2.2 EIB Group's rules and practices concerning the admissibility review and the communication of its output to relevant stakeholders

Considering the complainant's understanding that the acknowledgment of receipt sent on 1st of March 2016, conveyed that their complaint was admissible, it is worth here elaborating on the rules and practices with regard to the timing of the communication of the outcome of the admissibility check.

The EIB-CM's Terms of Reference establish that acknowledgments of receipt are sent to complainants in the context of the handling of admissible complaints. However, based on the relevant provisions of the European Code of Good Administrative Behaviour as well as of the Code of Good Aministrative Behaviour for the staff of the EIB in its relations with the public, receipt of all correspondence received by the EIB is acknowledged within two weeks, unless a substantive reply cannot be provided within this timeframe. This interpretation of the function of the acknowledgment of receipt is confirmed by article 7.1 of the EIB-CM's Rules of Procedure[1] which refers in general to complaints (and not to admissible complaints) and foresees the possibility, but not the obligation, to communicate the positive or negative outcome of the admissibility review through the acknowledgment of receipt; the provision also indicates that, should the outcome not be communicated in the acknowledgment of receipt, it will be communicated through further correspondence from the EIB to the complainant.

The decision of admissibility should not be seen as a "*una tantum*" decision of the EIB which cannot be reverted if additional facts or considerations are presented during the course of the inquiry. In principle, a complaint which *prima facie* seems to satisfy the admissibility criteria and as such is declared admissible may be, well after acknowledgment, declared fully or partially inadmissible, if the inquiry or the events suggest so.

In the present case, after the acknowledgment of receipt of the complaint and before the further correspondence .communicating the negative outcome of the admissibility review with regard to the allegations concerning the legality of the EIB-TP, the EIB assessed whether parts of the complaint challenging the legality of the action of EIB Governing Bodies could or could not qualify for the inquiry of the EIB-CM.

In this context and given the ongoing process of review of the EIB Group Complaints Mechanism, it should be recalled that possible discrepancies[2] between the provisions contained in the EIB-CM's Policy and its

---

[1] *"After receipt of a complaint, the EIB CM ensures that an acknowledgment of receipt is sent to the complainant within ten working days. The acknowledgement informs the complainant of the date by which the EIB's official reply to the complaint can be expected and may include the communication of the admissibility or of the inadmissibility of the complaint. In the latter case there will be no further communications from the EIB."*

[2] For instance, see article 4.3 of the Operating Procedures where it establishes that "*The admissibility check is performed within the 10 working days and the result is communicated to the complainant(s) at the same time of the acknowledgement of receipt. The admissibility check makes no judgement on the merits of the complaint.*
After admissibility check, complaints are registered and admissible complaints follow the internal complaints handling process. Complainants are informed (i) that the complaint has been registered, (ii) that an inquiry/assessment is initiated and (iii) about the date by which they may expect a response (40/140 working days).

Operating Procedures are being addressed as part of the review of the EIB-CM in order to ensure consistency between the provisions stemming from the general document approved by the EIB Board of Directors (the Policy) and those contained in the more detailed, implementation tool adopted by the EIB Management Committee (the Operating Procedures).

2.3 The rationale behind the EIB's decision not to refer the complainants' concerns about the Transparency Policy falling outside the scope of the EIB-CM to another EIB service

Finally, it appears necessary to elaborate on the reasons that led the EIB, when communicating the negative outcome of the admissibility review, not to address the complainants' concerns about the Transparency Policy outside the scope of the EIB-CM, for example by referring their letter to another EIB department.

In particular, as recalled in Annex II "Letter of the EIB SG to the complainants" dated 24 May 2017, the majority of the issues raised in the complaint submitted to the EIB-CM had already been raised by the complainants and addressed by the Bank as part of the public consultation on the revision of the EIB-TP in 2014-2015, as well as during the public consultation held in 2009-2010.

These issues had been also raised in the complainants' briefings sent to the EIB Board of Directors on the occasion of the EIB Board Seminar with Civil Society Organisations on 2 February 2015, and were extensively discussed during the Seminar.

In light of the above, it appeared that the complainants had already exhausted prior administrative approaches required in terms of the admissibility of their complaint to the EO. As a result, although in principle, the EIB advises external stakeholders on the way to better pursue a matter which does not fall within the remit of its Complaints Mechanism, in the present case such action did not appear required given the Bank's extensive engagement with the complainants' organisations on these same allegations before the submission of the complaint.

Nevertheless, and following the EO's suggestion, the EIB is pleased to reconsider its approach and has responded to the complainants' concerns as per Annex II.

If a complaint is inadmissible, the complainants are informed of the reasons of inadmissibility and provided with suggestions as to whom they may address their concerns, if applicable."

Европейска инвестиционна банка
Evropská investiční banka
Den Europæiske Investeringsbank
Europäische Investitionsbank
Euroopa Investeerimispank
Ευρωπαϊκή Τράπεζα Επενδύσεων
European Investment Bank
Banco Europeo de Inversiones
Banque européenne d'investissement
Banca europea per gli investimenti
Eiropas Investīciju banka
Europos investicijų bankas
Európai Beruházási Bank
Bank Ewropew ta' l-Investiment
Europese Investeringsbank
Europejski Bank Inwestycyjny
Banco Europeu de Investimento
Banca Europeană de Investiții
Európska investičná banka
Evropska investicijska banka
Euroopan investointipankki
Europeiska investeringsbanken

[redacted]

Luxembourg, 24 May 2017 IG/CM/2017-129/RR/nh

Dear Madam,

We refer to your complaint of 16 February 2016 sent on behalf of Client Earth, CEE Bankwatch Network and Counter Balance to the European Investment Bank (EIB), regarding the alleged non-compliance of the EIB Group Transparency Policy (EIB-TP)[1] with EU and international law on access to information.

Following your complaint to the European Ombudsman (EO) of 6 September 2016, and the EO's suggestion in her letter of 27 February 2017, in accordance with the principles of good administration, we are pleased to provide you with the Bank's response to the matters you have raised in your original complaint in relation to the compatibility of the EIB-TP with the Aarhus Convention[2], the Aarhus Regulation[3] and Regulation 1049[4].

The present response does not cover your allegations regarding the compliance of the EIB's activities with the EIB's policy framework set out under point 1.2.2 of your original complaint, which are currently being examined by the EIB Complaints Mechanism (EIB-CM).

For the sake of clarity and completeness, in this response we have tried to follow the order of your allegations as there are presented in your original complaint.

We would first like to point out that the majority of the issues raised in your complaint had already been raised by your organisations and addressed by the Bank as part of the public consultation on the revision of the EIB-TP in 2014-2015[5], as well as during the public consultation held in 2009-2010[6].

These issues were also raised in your organisations' briefings sent to the EIB Board of Directors on the occasion of the EIB Board Seminar with Civil Society Organisations on 2 February 2015, and were extensively discussed during the Seminar[7].

---

[1] http://www.eib.org/infocentre/publications/all/eib-group-transparency-policy.htm?f=search&media=search
[2] The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters done at Aarhus, Denmark, on 25 June 1998
[3] 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, OJ 2006 L 264, p. 13.
[4] Regulation (EC) N° 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.
[5] http://www.eib.org/about/partners/cso/consultations/item/public-consultation-on-eibs-transparency-policy-2014.htm
[6] http://www.eib.org/about/partners/cso/consultations/item/public-consultation-on-eibs-transparency-policy.htm
[7] http://www.eib.org/infocentre/events/all/eib-board-of-directors-seminar-with-civil-society-2015.htm?f=search&media=search

Applicability of Regulation N°1049/2001/EC, Regulation 1367/2006/EC and the Aarhus Convention to the EIB (Article 3.7, 3.8 and 5.1)

In this section of your complaint (1.1) you claim that the Regulation 1049/2001 applies to the lending activities of the EIB. You question the wording of Article 3.7 and 3.8 of the EIB TP with that respect and argue that, given that the Bank does not carry out legislative or judicial activities, the Bank's lending activities are administrative in nature and, therefore, are subject to Regulation 1049/2001.

In this regard, we would like to underline that, instead of limiting the scope of its Transparency Policy to its administrative tasks – as opposed to, notably, its banking activities - the Bank has gone further than what is required by article 15 of the TFEU in its adherence to EU regulations by taking into account and reflecting the provisions of Regulation 1049/2001 into its Transparency Policies (both in its current and previous versions) and applying them to all EIB activities.

Regarding the applicability of the Aarhus Convention and Regulation 1367/2006 (the Aarhus Regulation) to the EIB, the Bank understands that the Aarhus Regulation applies the principles of the Aarhus Convention by introducing, in a single piece of legislation, a framework for i) public access to environmental information received or produced by Community institutions or bodies or held by them, ii) public participation concerning plans and programmes relating to the environment and iii) the right given to qualified NGOs to access to justice in environmental matters at Community level under the conditions laid down in the Regulation. The Aarhus Regulation therefore applies to the EIB.

Given that the purpose of the EIB-TP is not to provide a detailed list of the all the EU Regulations applicable to the EIB, and that the Aarhus Regulation only covers matters related to a sub-type of information, the Bank considers that the reference to the Aarhus Convention and the Aarhus Regulation in Chapter 5 of the EIB-TP is sufficient and does not result in any restriction of the Bank's legal obligations[8].

On the basis of the above, we believe that the current wording or paragraphs 3.7 and 3.8, which was suggested by the European Ombudsman during the review of the EIB-TP and was reproduced ad-verbatim in the final text of the EIB-TP, clearly expresses, in a non-technical and user-friendly way, the EIB's understanding of the relationship between its Transparency Policy and the EIB's legal obligations.

1. Breach of duty to provide access to documents through a public register (Article 4 TP)

1.1 Duty to publish the location of documents in the public register (Articles 4.1 - 4.4)

In section 1.2.1 of your complaint, you claim that the Bank has the obligation to provide public access to a register of documents under Regulation 1049/2001, and to provide for the active dissemination of environmental information through electronic registers under the Aarhus Regulation. You further claim that neither the EIB-TP, nor the Bank's current practice, concerning the public register fulfils the Bank's obligation to inform the public of the existence of information whether the Bank intends to publish or not.

Without prejudice of the Bank's position on the issue of the applicability of Regulation 1049/2001 described in the previous point, the EIB aims to achieve the highest possible levels of transparency by publishing extensive information about its activities on its website. This includes the publication of several electronic registers such as the EIB project pipeline, the register of publications, the register of events or the register EIB procurement notices, to name but a few examples.

In compliance with the Aarhus Regulation, the EIB has set up and is progressively developing a public register of environmental information held by the Bank[9]. In order to provide the public with sufficient information about the type and scope of environmental information held by the Bank, the public register is completed by a "frequently asked questions" section, based on the similar section of the European

[8] For the sake of comparison, other EU Directives and Regulations applicable to the Bank's activities such as Regulation (EC) N°45/2001 regarding personal data protection or the EIA Directive, are also mentioned elsewhere in the EIB-TP.
[9] http://www.eib.org/infocentre/registers/index.htm

Ombudsman's public register, as well as by a number of publications such as the "*Guide for accessing environmental and social information/documents held by the EIB*"[10].
Through these documents and webpages, which are regularly being updated, the EIB seeks to provide the public with as much information as possible regarding the environmental documents typically held by the Bank, in particular with respect to its lending operations.

1.2 Insufficient dissemination of project information (Article 4.6)

In section 1.2.3 of your complaint, you claim that Article 4.6 of the EIB-TP, in being too broad and leaving too much discretion to the EIB with regard to the disclosure and publication of information, circumvents the provisions of Regulation 1049/2001 but also the requirement provided under Article 1(a) of the Regulation to "*ensure the widest possible access to documents*".

Without prejudice to the Bank's position on the issue of the applicability of Regulation 1049/2001 described above, we would like to clarify that chapter 4 of the EIB-TP concerns the publication of information while the principles of disclosure are covered in chapter 5. The purpose of this particular section (Articles 4.5 to 4.13) is to inform the public about the type of project-related information published on the EIB website, and it is not intended to introduce any additional exception to the Bank's general principle of presumption of disclosure or to the exceptions to disclosure which are described in Chapter 5. As indicated in Article 4.6 of the EIB-TP, the non-publication of a limited number of projects before Board approval or loan signature needs to be justified on the basis of the exceptions to disclosure laid down in Chapter 5 of the EIB-TP.

Irrespective of the above, all projects financed by the Bank, including the limited number of projects which are not published before approval or signature, are published on the "projects financed" section of the Bank's website[11] once they have been signed. All information regarding those projects held by the Bank is subject to the principles of disclosure upon request described in the Policy.

2. Exceptions from the presumption of disclosure upon request

2.1 Differentiation between the exceptions applicable to requests for environmental information and those for non-environmental information

In section 1.3.1 of your complaint, you claim that the EIB-TP should differentiate between environmental information and non-environmental information.

While the EIB-TP is based on the general principle of presumption of disclosure and its Chapter 5, including the exceptions for disclosure, applies to all information and documents held by the Bank, irrespective of the nature of this information/document, the EIB-TP does take into consideration the particular nature of the information and documents related to the environment as well as the Bank's obligations to comply with the Aarhus Regulation.

When a request concerns environmental information, the Bank interprets its Transparency Policy in light of the Aarhus Regulation and the Aarhus Convention. Also, article 5.1.b of the EIB-TP specifies that "[t]*he present Policy applies without prejudice to the right of public access to information/documents held by the EIB which might follow from* [the Aarhus Convention and EC corresponding regulations]*; or other instruments of international law or acts of institutions implementing them*".

In addition, Articles 5.7 of the EIB-TP refers to the existence of an overriding public interest in disclosure where the information/document requested relates to emissions into the environment. This is fully in line with Article 6.1 of the Aarhus Regulation which states that: "*an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment*".

[10] http://www.eib.org/projects/documents/access_to_information.htm
[11] http://www.eib.europa.eu/projects/loan/list/index.htm

Furthermore, Article 5.8 of the EIB-TP is also based on the Aarhus Regulation and is meant to ensure that the exceptions are interpreted restrictively when a document contains environmental information.

2.2 Confidentiality agreements (Article 5.5)

In section 1.2.3 of your complaint, you claim that Article 5.5 of the EIB TP and its footnote n° 5 referring to confidentiality agreements provide "far too much discretion to the Bank to be in conformity with the relevant legislative framework". You argue that finance contracts concluded by the Bank may contain environmental information and therefore cannot be withheld from the public in their entirety. You further argue that the Bank must also carry out a case specific examination to be argued on its merits, in accordance with the CJEU's case law, which takes into account whether the risk of a protected interest being undermined by disclosure is reasonably foreseeable and not purely hypothetical.

While noting that the reference to commercial interests covering confidentiality agreements is based on the wording of the Aarhus Regulation (Recital 15), we would first like to clarify that the purpose of the footnote in question is not to single out any particular type of document, but rather to provide an example of cases, which are very common in banking, where commercial interests may need be protected due to the existence of a confidentiality agreement to which the EIB is legally bound. This is based on the underlying assumption that due to its commercially sensitive nature, information must be afforded protection from undue disclosure. In line with the wording of the Aarhus Regulation, the reference to confidentiality agreements is to be considered as an expression of the existing exception to disclosure as defined in the EIB-TP (that is, the protection of commercial interests).

The EIB fully acknowledges that finance contracts may contain environmental information and therefore cannot be withheld from the public. As a matter of fact, the Bank regularly discloses environmental and social information contained in finance contracts concluded by the Bank following requests, including from the organisations co-signing your complaint.

Furthermore, and following the EO's own-initiative inquiry OI/3/2013, the Bank has also published on its website a reference document containing the template contractual clauses on environmental matters contained in the finance contracts signed by the EIB[12]. Whenever additional environmental conditions are required from an individual financing operation, these are described in the Environmental and Social Data Sheet (ESDS) of the project.

In addition, and in line with Article 5.7, when handling access to documents requests, the EIB already analyses each case individually, in light of the case law of the European Court of Justice, to determine whether there are public interests at stake which would override the protection of other legitimate interests.

Finally, kindly also note that, in line with Article 5.11 of the EIB-TP, the Bank does not object to project promoters, borrowers, or other competent parties making information/documents available on their relationship and arrangements with the EIB.

The EIB therefore considers that Article 5.5 of the EIB-TP is in line with the relevant legislative framework.

2.3 Presumption of confidentiality regarding investigations (Article 5.5)

In section 1.3.3 of your complaint, you claim that the exception on inspections, investigations and audits provided in Article 5.5 of the EIB-TP is too broad. You argue that the extension of a general presumption to all documents pertaining to investigations carried out by the Bank has no basis in EU law.

Article 15(1) of the TFEU requires Union institutions, bodies, offices, agencies, including the EIB, to conduct their work as openly as possible in order to promote good governance and to ensure the participation of civil society. Article 15(3) submits the EIB to transparency rules only as far as administrative tasks are concerned.

[12] http://www.eib.org/about/documents/eib-standard-contractual-clauses-on-environmental-information.htm

Nevertheless, as noted above, the EIB has, rather than limiting the scope of its TP to its administrative - as opposed to, notably, its banking - tasks as required by primary law, gone further than what is required by Article 15 of the TFEU by applying its transparency rules to all EIB activities.
In doing so, the Bank has aligned its TP with Article 4.2. of Regulation 1049/2001, which explicitly provides for an exception from disclosure with respect to inspections, investigations and audits.

The application of the exception to disclosure of documents collected and generated during inspections, investigations and audits, even after these have been closed, strikes a balance between the Bank's need to ensure the proper operation of its investigation procedures, past, current and future, and its firm commitment to transparency. This is especially relevant given the possibility that internal investigations are followed up not only by subsequent internal investigations or audits, but also by national criminal investigations.

Nevertheless, it is important to note that, even where the TP provides for an exception to disclosure of information and documents collected and generated during inspections, investigations and audits even after they are closed, the Bank has taken the proactive step of making provision for the publication of a summary of these investigations. This practice is, again, proportionate to the aim of simultaneously protecting the Bank's confidential procedures whilst fulfilling its commitment to transparency. Finally, it is recalled that the exception to disclosure as expressed in the TP expressly excludes investigations carried out in line with the EIB Complaints Mechanism's Principles, Terms of Reference and Rules of Procedure.

2.4 Intermediated Loans and investor activities [Articles 5.12 and 5.13)

In section 1.3.4 of your complaint you claim that the EIB should ensure that intermediated loans are subject to the same transparency requirements as other types of loans, and that information pertaining to these projects should also be placed on the public register. You argue that the results of the EIB assessment of issues such as the adequacy and effectiveness of the environmental and social systems that the intermediary has in place, or the environmental social risk management capacity of the intermediary, as well as the environmental and social assessment of a particular sub-project under these types of operations, should be subject to disclosure requirements and be placed on the public register.

You further argue that other documents that contain environmental information such as non-Technical Summaries of EIAs or EIA reports for individual allocations should be disclosed by the EIB. You also indicate that the same considerations apply with regard to investor activities as mentioned in section 5.12 of the EIB Group Transparency Policy.

We would first like to clarify that, besides providing the public with the right to access EIB-held information, the EIB-TP also ensures that information is protected from disclosure when the latter would undermine the legitimate rights and interests of third parties, and/or those of the EIB Group in line with the exceptions defined in the EIB-TP (Article 2.5).

These exceptions also apply to commercially sensitive information on individual allocations made by local banks to support investments by their own customers under credit lines established with the EIB. This information falls within the competence of the intermediary bank as part of the normal business relationship between a bank and its customers, and is also normally covered by national rules on Banking confidentiality. The EIB has no contractual relationship with final beneficiaries of intermediated loans. The intermediary bank is the final beneficiary's business partner, carrying the underlying projects' commercial risks and contractual relationship.

Within this context, EIB Intermediated loans follow the same approval process as investment and framework loans, and are therefore subject to the same transparency requirements as other types of loans; all intermediated loans are published on the EIB website, and information held by the Bank regarding these loans is subject to the transparency provisions described in the Policy.

It is important to note however that, due to their characteristic, the environmental and social due diligence of intermediated loans is different from other types of loans and therefore, the environmental information held by the Bank pertaining to these loans is substantially affected by this difference.

Contrary to other type of loans, and with the exception of some sector-specific funds, intermediated loans do not have an Environmental and Social Data Sheet, and the Bank would not pursue an operation where the financial intermediaries' environmental capacities have been assessed to be insufficient. Financial intermediaries are contractually requested to ensure that final beneficiaries comply with the EIB environmental and social standards and with applicable national and EU legislation, as appropriate, and this requirement is reflected in the project summaries published on the Bank's website[13].

As indicated above, the EIB has no contractual relationship with final beneficiaries, and therefore the publication of environmental information (EIAs, EIS, NTS, etc.) for individual allocations under these intermediated loans falls under the responsibility of the financial intermediaries and/or the competent authorities in line with applicable national and EU law.

The Bank does not have sufficient information to understand your comment in §59 of your complaint indicating that the same considerations you made for intermediated loans also apply with regard to investors activities as mentioned in section 5.12 of the EIB-TP. We would therefore welcome any further clarification from you regarding this comment.

3. The procedure for handling information requests

3.1 Time limits (Article 5.22 to 5.24)

In section 1.4.1 of your complaint you claim that footnote 8 of Article 5.22 of the EIB –TP states that deadlines to reply to requests to access documents originating from third parties may be extended. You argue that neither Regulation 1049/2001 nor the Aarhus Convention allows this time limit to be extended for third parties documents.

Without prejudice to the Bank's position on the issue of the applicability of Regulation 1049/2001 described above, we would like to clarify that the footnote 8 of article 5.22 does not constitute an alteration of the deadlines. It rather explains that practically, in some cases, deadlines cannot be adhered to by the EIB due to circumstances beyond the EIB's control. As a matter of fact, this principle is also acknowledged in Article 7(3) of Regulation 1049/2001 which foresees that, in exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the initial 15 working-days' time-limit provided for responding to an application may be extended. This is further explained in Articles 5.23 and 5.24 of the EIB-TP.

Given that, due to the nature of its activities, a considerable amount of information and documents held by the Bank relates to third parties, and that, on the basis of Article 5.9 of the EIB-TP, requests that concern such information may require the Bank to consult with those third parties, the Bank considers that informing the public about the practical constraints that may arise when handling certain complex requests, is not only fully in line with the applicable regulations, but also with the general principles of good administration.

3.2 Avenues of redress following confirmatory application (Article 5.33 and 5.34)

In section 1.4.2 of your complaint you claim that Articles 5.33 and 5.34 of the EIB-TP fail to provide citizens with accurate information regarding the available avenues of redress once a confirmatory application has been refused or ignored. You argue that the additional step of making a complaint to the EIB Complaint Mechanism (EIB-CM) is confusing and may result in the applicant being unable to challenge the decision before the EU Courts.

The EIB-CM does not constitute an "additional step" but provides the opportunity to challenge the initial decision of the EIB by submitting a complaint to a service which is operationally independent from the one which handled the initial request. As such it constitutes a requirement for the admissibility of cases before the Ombudsman in line with article 2.4 of the EO's Statute ("prior administrative approaches").

[13] This requirement is equally reflected in the Board report

When wishing to challenge an EIB's decision concerning total or partial refusal to disclose, stakeholders have two options: either address alternative dispute resolution mechanisms as the EIB-CM and the European Ombudsman or submit a case before the Court. In the second case they will be able to challenge the initial decision, but they could also decide to challenge the decision of the EIB on the complaint and not on the original request.

The EIB-TP as well as the EIB-CM's Principles, Terms of Reference and Rules of Procedure clarify which are the options available when deciding to challenge the EIB's decision and which impacts the option will entail - in particular with regard to the inadmissibility of complaints already handled or settled by an administrative or judicial review procedure.

It should thus be recalled that the fact that the EIB and the EO provide any project-affected person with a possibility to seek non-judicial review of the administrative action of the EIB does not exclude the right of those who have the legitimacy to do so to challenge the decisions of the EIB before the EU judicial system.

Conclusion

The EIB considers that the EIB Group Transparency Policy approved by the Board in March 2015 is fully in line and complies with EU and international law on access to information applicable to the EIB.

The Policy, as well as its previous versions, has been subject to extensive public consultations to which your organisations have been actively participating. The Bank welcomes this interest and active involvement, and encourages you to continue to engage in this dialogue in a constructive way.

Yours sincerely,

EUROPEAN INVESTMENT BANK

[redacted]

Klaus Trömel
Secretary General

Marjut Santoni
Deputy Secretary General