

# Study on the active publication of 'environmental information' by financing entities

Final report to the Directorate-General for Parliamentary Research Services, Directorate A – Members' Research Services



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Responsibility for the contents of this report remains with LE Europe.

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## Abbreviations

ADB	Asian Development Bank
BPF	Banco Português de Fomento
CSOs	Civil Society Organisations
DEG	Deutsche Investitions- und Entwicklungsgesellschaft
D&R	Documents and Reports
EIA	Environmental impact assessment (at ADB)
EARF	Environmental assessment and review framework (at ADB)
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EIA	Environmental Impact Assessment
EIS	Environmental and Social Impact Study/Statement (at EIB)
EMP	Environmental Management Plan (at ADB)
EPRS	European Parliament Directorate-General for Parliamentary Research Services
ESCS	Environmental and Social Completion Sheets (at EIB)
ESDS	Environmental and Social Data Sheets (at EIB)
ESF	Environmental and Social Framework (at WB)
ESIA	Environmental and Social impact Assessment
ESMS	Environmental and Social Management Systems
ESMP	Environmental and Social Management Plan
ESRC	Environmental and Social Risk Classification (at WB)
ESRS	Environmental and Social Review Summary (at WB)
ESS	Environmental and Social Standard (at WB)
ESS10	Tenth ESS standard (at WB)
ESSD	Environmental and Social Due Diligence
FC	Financial Cooperation
FI	Financial intermediary
IBRD	The International Bank for Reconstruction and Development
ICR	Implementation Completion and Results (at WB)
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFC	International Finance Corporation
IEE	Initial Environmental Examination (at ADB)
IED	Independent Evaluation Department (at ADB)
IEG	Independent Evaluation Group (at WB)
IPF	Investment Project Financing (at WB)
ISR	Implementation Status and Results (at WB)
KfW	Kreditanstalt für Wiederaufbau
MIGA	Multilateral Investment Guarantee Agency
MGOs	Multinational Government Organisations
NTS	Non-Technical Summaries
OSEC	Office of the Secretary (at ADB)
PDS	Project Data Sheet (at ADB)
REA	Rapid Environmental Assessment (at ADB)
SEP	Stakeholders Engagement Plan (at WB)
SME	Small and medium-sized enterprises
SPS	Safeguard Policy Statement (at ADB)
SRS	Safeguard Requirements (at ADB)
UIG	Umweltinformationsgesetz

UNECE      United Nations Economic Commission for Europe  
WB          World Bank

## Executive Summary

### Introduction

The European Parliament's Directorate-General for Parliamentary Research Services (EPRS) commissioned LE Europe to undertake a study which identifies the current practices of four promotional and development banks, the World Bank (WB), the Asian Development Bank (ADB), the Kreditanstalt für Wiederaufbau (KfW) and the Banco Português de Fomento (BPF) regarding the **active publication of environmental information** about the projects that they finance either directly or indirectly through intermediaries and to draw out best practices. As the recently founded BPF is still in the process of developing its environmental strategy and its processes for assessing the environmental impacts of the projects it is funding, less information on this institution is provided in the present study.

The information presented in this report is based on the information available on the websites of the WB, ADB, KfW and BPF, a literature review and consultations with officials of the four institutions.

### The Aarhus Convention and the publication of environmental information

The Aarhus Convention, negotiated under the auspices of the United Nations Economic Commission for Europe (UNECE), provides a number of procedural rights related to the public's interaction with environmental issues and is the leading international agreement on environmental democracy. The objective of the Aarhus convention is that members of the public become informed about the state of the environment through being able to access environmental information (the Access to Information pillar). Greater awareness is expected to create interest in receiving information about proposed projects, encouraging public participation. It should be noted that while Access to Information is a singular pillar of the Convention, it includes two sets of rights – the right to access environmental information (Article 4), and the right to have environmental information proactively disclosed (Article 5). These rights are respectively known as the passive and active rights to environmental information.

**The focus of the present study is the right to have environmental information proactively disclosed as foreseen by article 5 of the Convention.**

### Publication of project-related environmental information by the WB, the ADB, the KfW and the BPF

**The practice of actively publishing project-related environmental information varies greatly across the three institutions.** The table overleaf shows the project-related environmental information published by the WB and ADB. The publication practices of these two institutions are very similar. They publish significantly more information than the European Investment Bank (EIB) and in more timely manner. The approaches adopted by the WB and the ADB can be said to represent best practices regarding the active publication of project-related environmental information.

**Figure 1 Project-related environmental information published by the WB and the ADB during the project cycle**

Stage in project cycle	Environmental information published by the WB	Environmental information published by the ADB
Proposal	Environmental and Social Summary (ESRS), including an Environmental and Social Risk Classification (ESRC)	Project Data Sheet (with the environmental risk rating)
Preparation	<p>Environmental and Social impact Assessment (ESIA), prepared by the project sponsor and any related /supporting documents</p> <p>Classification by the WB of the environmental risk of a project</p> <p>For high and substantial risk projects, the information has to be published before the appraisal stage</p>	<p>Draft environmental impact assessment (EIA) prepared by project sponsor for high-risk projects (120 days prior to Board consideration) and any related /supporting documents</p> <p>Draft environmental assessment and review framework (EARF) before project appraisal</p> <p>Final EIA or final Initial Environmental Examination (IEE)</p>
Appraisal	Appraisal Environmental and Social Review Summary (which is an updated Environmental and Social Summary (ESRS)), including any updates to the ESRC and reasons for doing so	
Approval	Project Appraisal Document. For High risk and Substantial Risk projects, the Project Appraisal Document will specify the project-related documents that will be prepared and disclosed following Board approval	Report and recommendation of the President to the Board
Monitoring and Reporting / Evaluation	Bi-annual disclosable version of the Implementation Status and Result report. This report includes environmental risk rating at approval, previous rating and current rating	<p>In the case of Category A projects, bi-annual environment report during the construction phase and annual environment report during the operation phase</p> <p>In the case of Category B projects at a frequency determined by the ADB</p>
	Implementation and Completion Report	Project Completion Report (self-evaluation)
	Project Performance Assessment Report (Evaluation)	Project Evaluation Report

Moreover, both the WB and the ADB require a borrower to inform a project’s stakeholders about the potential environmental risks and impacts of a project. Such information must be provided to

stakeholders in a timely manner, in an accessible place and in a form and language understandable to the project-affected parties and other interested parties.

The various parts of the KfW group differ in their practices regarding the proactive publication project-related environmental information. The KfW Development Bank publishes on its website the environmental risk rating of a signed project together with a brief description of the risk. The Deutsche Investitions- und Entwicklungsgesellschaft (DEG) publishes only the environmental risk rating with the description of signed projects. None of the other parts of the KfW group publish any project-related environmental information.

The BPF does not publish any project-related environmental information at the present time.

### **Timing of publication**

**The timing of the publication of environmental information also varies across the institutions.** In the case of the WB and ADB, project-related environmental information is published throughout the project cycle, from project identification to post-completion project evaluation.

In the case of the KfW organisations publishing project-related environmental information, they do so after the signing of the projects.

### **Disclosure mechanisms**

The World Bank's official disclosure mechanism is their Documents and Reports (D&R) site which contains, for example, the Environmental and Social Summaries and the Environmental and Social Risk Assessments.

The Asian Development Bank's official disclosure channel for project information is the 'Projects & Tenders' section of their website which for each project provides a project overview, i.e. a short summary of the project, accompanied by links to the most recent project documents and a project data sheet which includes basic information including the environmental and social risk classifications.

In the case of the KfW organisations, the project-related environmental information is published with the short descriptions of the various projects on an interactive page of the websites of KfW Development Bank and DEG.

### **Exception to disclosure of environmental information**

The World Bank's Access to Information Policy incorporates several exceptions to the disclosure of information. These exceptions aim to protect the confidentiality of information pertaining to shareholders, clients, staff and other parties, and to protect its deliberative process, and information from member countries or third parties that was provided on the understanding of confidentiality.

While one of ADB's main principles of its Access to Information Policy is presumption of disclosure, exceptions are made based on the ADB's determination that disclosure of information would cause harm to specific parties or interests that would outweigh the benefits. The list of exceptions is very similar to that of the World Bank.

In the case of KfW, the legal grounds for refusals to disclose environmental information are listed in the Umweltinformationsgesetz transposing the respective EU transposition of the Aarhus Convention.

### **Project funding involving financial intermediaries**

One of the World Bank's Environmental and Social Standards relates specifically to the requirements for public and private financial intermediaries. Financial intermediaries (FIs) are required to develop and maintain an Environmental and Social Management Systems (ESMS). The ESMS align with the nature and extent of the environmental and social risks and impacts associated with FI subprojects, the types of financing, and the overall risk aggregated at the portfolio level. When FI subprojects are likely to have minimal or no adverse environmental or social risks or impacts, the FI will apply national law. Under the Environmental and Social Framework (ESF), financial intermediaries must ensure transparency regarding their ESMS. This involves disclosing, if applicable, a summary of each component of the ESMS on their own website, if such website exists. Additionally, they should provide written permission for the Bank to publish this information on the Bank's website.<sup>1</sup>

Additionally, the FI is required to ensure that all sub-borrowers disclose any project-related documents that are either mandated by the application of the Environmental and Social Standards (ESSs) or for any FI subprojects that are categorised as high risk according to the FI's own system.<sup>2</sup> Sub-borrowers are also obliged to disclose any environmental and social monitoring reports. In cases where the FI's portfolio signals a potential for significant environmental or social impacts, FIs must establish an Environmental and Social management System (ESMS) in line with the nature and risks of the FI's anticipated portfolio.

In the case of the ADB, the FI has to ensure that the subprojects meet the ADB's requirements specified in the ADB Safeguard Policy Statement, including information disclosure and consultation. Where subprojects are identified by the FI to have potentially significant environmental or social risks, the FI must promptly refer them to the ADB. If the project is approved, the ADB will monitor the FI's performance on the basis of its environment and social management system. The FI will prepare and submit periodic reports at least annually on the implementation status of its ESMS. For subprojects that have potentially significant environmental or social risks, the disclosure requirements that apply to higher risk projects financed wholly by the ADB also applies to the FI and the sub-project. For example, the annual report that the FI submits to the ADB is published on the ADB's website.

In the case of KfW Development Bank, projects involving the provision of funding to financial intermediaries for on-funding, the Environmental and Social Due Diligence (ESDD) of the financial intermediaries will focus on the potential environmental and social impacts and risks of the planned funding area and the financial intermediaries' procedures and capacity to assess environmental and social concerns and monitor loans in its portfolio. Moreover, in cases where KfW Development Bank owns shares of the financial intermediary, the ESDD covers the whole portfolio of the intermediary. A broadly similar approach is followed by the DEG.

### **Potential changes to the institutions' policies regarding the active publication of project-related environmental information**

Neither the World Bank nor the KfW institutions are planning to make changes to their current approach to the active disclosure of environmental information while the ADB is currently in the process of updating its Safeguard Policy Statement (SPS) which has been in operation since 2009.

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<sup>1</sup> The World Bank (2018); ['Environmental and Social Framework for IPF Operations. ESS9: Financial Intermediaries'](#).

<sup>2</sup> The World Bank (2018); ['Environmental and Social Framework for IPF Operations. ESS9: Financial Intermediaries'](#).

# 1 Introduction

The European Parliament's Directorate-General for Parliamentary Research Services (EPRS) commissioned LE Europe to undertake a study which identifies the current practices of four promotional and development banks regarding the active publication of environmental information about the projects that they finance either directly or indirectly through intermediaries and draws out best practices. Active publication is the unsolicited publication of environmental information by the promotional and development banks.

The provision of environmental information is essential for citizens to be able to be well informed and assess the various environmental aspects of projects funded by governments and government-owned entities. Such provision of environmental information is mandatory for the parties to the UNECE<sup>3</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The four promotional and development banks whose practices were to be identified and reviewed by the study included two international development institutions (World Bank (WB) and Asian Development Bank (ADB) and two national promotional/development institutions (Kreditanstalt für Wiederaufbau (KfW) and Banco Português de Fomento (BPF)). Banco Português de Fomento (BPF), a newly established entity, was at the time of this report's preparation still in the early stages of formulating its environmental strategy, establishing internal processes to assess environmental impacts in project assessments, and determining its policy regarding the disclosure of environmental information. Therefore, the report is not in position to present BPF's practices.

The report is structured as follows:

- Chapter 2 describes the research methodology used for the present study.
- Chapter 3 provides detailed information on the Aarhus convention.
- Chapter 4 presents the development and promotional banks covered by the report.
- Chapter 5 describes the typical project cycle at development and promotional banks.
- Chapter 6 reviews the project-related environmental information published actively by the WB, ADB and KfW.
- Chapter 7 discusses the legal basis for the active publication of project-related environmental information by the WB, ADB and KfW.
- Chapter 8 reviews the form in which project-related environmental information is actively made available by the WB, ADB and KfW to the public.
- Chapter 9 examines whether project sponsors / promoters can prevent the active publication of project-related environmental information by the WB, ADB and KfW.
- Chapter 10 discusses how the WB, ADB and KfW ensure that their environmental requirements are met in the case of projects involving the provision of funding to financial institutions which in turn use this funding to provide debt or equity to their clients.
- Chapter 11 finally reviews whether any of the three institutions plan to change their current approach to the active publication of project-related environmental information.

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<sup>3</sup> United Nations Economic Commission for Europe.

A number of Annexes provide background information on:

- Article 5 of Aarhus Convention – Collection and Dissemination of Environmental Information (Annex 1).
- Article 4 of REGULATION (EC) No 1367/2006 (Annex 2).
- The typical project cycle at the ADB and WB (Annex 3).
- The WB Environmental and Social Standards (Annex 4).
- The ADB's Rapid Environmental Assessment checklist (Annex 5).
- The ADB project risk typology (Annex 6).
- The environmental risk rating of the KfW Development Bank (Annex 7).
- The legal reasons for refusing to provide requested environmental information under German Umweltinformationsgesetz (UIG) (Annex 8).

## 2 Research Method

The terms of reference of the study specified that the following nine research questions were to be addressed:

1. What project funding processes of other financing entities are comparable to those of the European Investment Bank?
2. What 'environmental information' - as understood under, or comparable to, 'environmental information' under the Aarhus rules - do those financing entities collect and publish?
3. At what point during the decision-making process for funding (or not) of projects do those financing entities publish 'environmental information'?
4. At what point, at what interval, and at what level of detail during the monitoring of projects do those financing entities publish 'environmental information'?
5. What are their legal obligations / bases for doing so?
6. In what form is the data available? (e.g., aggregate annual report or database) and is there a system of continuous monitoring and updating?
7. What are the possibilities for project promoters or other partners of the financing entities to prevent or delay the publication of 'environmental information'?
8. Do those financing entities ensure that 'environmental information' is actively published for projects that they finance (wholly or through co-financing) through intermediaries? If yes, what are the rules on the basis of which they do so?
9. Are any of those financing entities about to change / have changed their current 'environmental information' publication practices, and/or will do so in the near future? If so, what are the reasons for this?

To address the different research questions, a three-step research approach was followed.

- The first step involved an extensive review of the information provided on the websites of the WB, the ADB, the different parts of the KfW and BPF.
- A second step involved a search for literature focusing on the publication of environmental information by the institutions of interest and analysis of the identified literature.
- Finally, a series of stakeholder consultations were undertaken in a third step. These consultations involved a combination of interviews and written responses to consultation questions.

Details of the precise information sources used in this report are provided in each of the sections addressing the different research questions.

## 3 The Aarhus Convention

As background information for the study, this section provides:

- an overview of the Aarhus Convention (section 3.1);
- a detailed analysis of articles 4 and 5 the Convention, the two key articles of the Convention regarding the publication of environmental information (section 3.2);
- a discussion of how articles 4 and 5 are enforced (section 3.3);
- a review of the implementation of the Convention in the EU (section 3.4);
- an analysis of the applicability of the Convention to the multilateral development banks and national promotional banks (section 3.5).

### 3.1 Overview of the Aarhus Convention

The Aarhus Convention, negotiated under the auspices of the United Nations Economic Commission for Europe (UNECE), provides a number of procedural rights related to the public's interaction with environmental issues and is the leading international agreement on environmental democracy.<sup>4</sup>

The Aarhus Convention is a multilateral environmental agreement which comprises **three pillars: access to information, public participation, and access to justice**. The access to information refers to the right for the public to have access to environmental information held by public authorities. The Aarhus Convention also requires, in particular through its 2003 Protocol on Pollutant Release and Transfer Registers, that certain pollutant information is made publicly available through an inventory, without the need for an applicant to submit a request.<sup>5</sup>

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<sup>4</sup> European Commission (2023); [‘The Aarhus Convention and the EU’](#).

<sup>5</sup> European Commission (2023); [‘Participatory and Procedural Rights in Environmental Matters: Module 2: Access to Information in international law’](#).

#### **Box 1      Definition of ‘public authority’ under the Aarhus Convention<sup>6</sup>**

Under the Aarhus Convention, public authorities are defined as:

- a) Governments at national, regional and other level;
- b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;
- c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;
- d) The institutions of any regional economic integration organisation referred to in article 17 (of the Convention) which is a Party to this Convention.
- e) This definition does not include bodies or institutions acting in a judicial or legislative capacity.

#### **Box 2      Definition of ‘environmental information’ under the Aarhus Convention<sup>7</sup>**

Under the Aarhus Convention, environmental information is defined as any information on:

“(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.”

The three pillars of the Convention are interlocking: members of the public become informed about the state of the environment through being able to access environmental information (the Access to Information pillar). Greater awareness is then expected to create interest in receiving information about proposed projects, encouraging public participation (the Public Participation pillar). These rights lead to a greater range of inputs and “buy-in” from the public to improve both the quality and

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<sup>6</sup> UNECE (1998); [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#) Article 2(2). It should be noted that subsections b and c of this article are designed to reflect the increasing trend of the privatisation of public services.

<sup>7</sup> UNECE (1998); [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#).

acceptance of environmental decisions from the state. These procedural rights are reinforced by the third pillar (Access to Justice), which serves as a mechanism for enforcing the rights established in the first two pillars. In this way, the Access to Information pillar can be seen as a preliminary step to foster public participation.

## 3.2 Articles 4 and 5 of the Aarhus convention

It should be noted that while **Access to Information** is a singular pillar, it includes two sets of rights: the right to have environmental information proactively disclosed (Article 5) and the right to access environmental information (Article 4). These rights are respectively known as the active and passive rights to environmental information.<sup>8</sup>

### 3.2.1 Article 5

**Article 5 of the Aarhus Convention obliges public authorities to proactively disclose environmental information to the public.** Recognising that public authorities can only proactively disclose environmental information that they hold, the Aarhus Convention obliges public authorities to “possess and update environmental information which is relevant to their functions”.<sup>9</sup> Furthermore, the Convention obliges public authorities to establish a mandatory system that ensures an “adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment”.<sup>10</sup>

Regarding the specifics of how the environmental information should be proactively disclosed, the Convention requires that proactive disclosure should be transparent and accessible.<sup>11</sup> These conditions need to be met through:

- “a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;
- (b) Establishing and maintaining practical arrangements, such as:
  - (i) Publicly accessible lists, registers or files;
  - (ii) Requiring officials to support the public in seeking access to information under this Convention; and
  - (iii) The identification of points of contact;
- (c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge.”<sup>12</sup>

In addition to these conditions, a general obligation is imposed on states to ensure that environmental information is made available through electronic databases which are “easily accessible” to the public.<sup>13</sup> The information which should be made available through these

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<sup>8</sup> UNECE (1998); [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#).

<sup>9</sup> Aarhus Convention, Article 5(1)(a).

<sup>10</sup> Aarhus Convention, Article 5(1)(b).

<sup>11</sup> Aarhus Convention, Article 5(2).

<sup>12</sup> Aarhus Convention, Article 5(2).

<sup>13</sup> Aarhus Convention, Article 5(3).

databases is then set out in more detail, although it should be highlighted that the use of the verb “should” means that this is not a binding legal obligation.<sup>14</sup>

The remainder of Article 5 is dedicated to detailing various types of environmental information that needs to be proactively disclosed by the state. As the specifics of these obligations are often not commensurate with the proactive disclosure obligations of development and promotional banks, no further detail will be provided.<sup>15</sup>

It is worth noting that the proactive disclosure of environmental information is often viewed as “good practice” rather than an exercise of a legal right. While this positioning of the proactive disclosure rights does embed proactive disclosure practices within public authorities, this does, counterintuitively, minimise knowledge of the specific right to proactive disclosure.<sup>16</sup> Additionally, a complicating factor is that, in domestic law, proactive disclosure obligations are often scattered across various pieces of legislation, making it challenging to identify precisely what environmental information should be proactively disclosed, resulting in a fragmented legal landscape.

#### 3.2.2 Article 4

**Article 4 of the Aarhus Convention obliges public authorities to disclose environmental information on request to the public without the applicant having to justify the request**<sup>17</sup> “within the framework of national legislation”.<sup>18</sup> “The public” is given a broad definition, encapsulating members of civil society, NGOs and the private sector.<sup>19</sup> Additionally, the nationality of the applicant is irrelevant as a factor for the exercise of the Convention’s information rights.<sup>20</sup> This is notable as it means that individuals, who are citizens of a non-ratifying state, are able to exercise a right to access environmental information from public authorities based in states which have ratified the Aarhus Convention.

Minimal requirements are imposed on the public seeking access to environmental information. There is no particular form or format of request which the member of the public must adhere to,<sup>21</sup> and they do not need to justify why they want to access the requested information.<sup>22</sup> However, one particular requirement imposed on members of the public when they request access to environmental information is that their request must be sufficiently precise to identify the

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<sup>14</sup> J Ebbesson, H Gaugitsch, J Jendroška, F Marshall and S Stec, *The Aarhus Convention: An Implementation Guide* (2<sup>nd</sup> edn, United Nations, 2014), 106.

<sup>15</sup> The complete article 5 is provided at Annex 1.

<sup>16</sup> See generally S Whittaker, Colin T. Reid and J Mendel, *Freedom of Environmental Information: Aspirations and Practice* (2023, Intersentia).

<sup>17</sup> Aarhus Convention, Article 4(1)(a).

<sup>18</sup> Aarhus Convention, Article 4(1).

<sup>19</sup> Aarhus Convention, Article 2(4).

<sup>20</sup> Aarhus Convention, Article 3(9).

<sup>21</sup> J Ebbesson, H Gaugitsch, J Jendroška, F Marshall and S Stec, *The Aarhus Convention: An Implementation Guide* (2<sup>nd</sup> edn, United Nations, 2014), 79-80.

<sup>22</sup> Aarhus Convention, Article 4(1)(a).

information they are seeking.<sup>23</sup> If the request is too general, the public authority is entitled to refuse to process it.<sup>24</sup>

Public authorities are obliged to respond to a request for environmental information as soon as possible, with an outer limit of one month unless the complexity or volume of the information requested justifies an extension to two months.<sup>25</sup> Additionally, while discharging their obligation to disclose environmental information, public authorities are obliged to provide the information in the form requested<sup>26</sup> unless it is reasonable to provide it in another form<sup>27</sup> or it is already publicly available.<sup>28</sup>

In disclosing environmental information under Article 4, public authorities are entitled to impose a “reasonable” charge.<sup>29</sup> The term “reasonable” is not defined in the Convention itself. However, the Aarhus Convention Compliance Committee<sup>30</sup> determined that charges which dissuade persons from requesting information are unreasonable.<sup>31</sup> Further, for a charge to be considered reasonable, the public authority must honestly believe, considering all relevant factors, that the charge is reasonable and that a reasonable public authority, taking account of the same factors, would reach the same conclusion.<sup>32</sup>

#### 3.2.3 Exceptions to the requirement to disclose environmental information

**A key element of the Aarhus Convention is that public authorities are entitled to refuse to disclose the requested environmental information where it falls within one of the listed exceptions** (see details below). These exceptions provide the sole basis for which a public authority is entitled to withhold environmental information from disclosure: any other reason is an invalid ground for non-disclosure and cannot be relied on by the public authority.

There are **two categories of exceptions**.

The first category of exceptions under the Convention are general in nature: public authorities can refuse requests if they do not hold the information requested;<sup>33</sup> if the material requested is in the course of completion or concerns internal communications, provided that the exception is enshrined in national law or customary practice and taking into account the public interest in

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<sup>23</sup> Aarhus Convention, Article 4(3)(b).

<sup>24</sup> Although the public authority is also obliged to provide advice and assistance to the individual under article 3(2) – which will often include assistance in refining the request.

<sup>25</sup> Aarhus Convention, Article 4(2).

<sup>26</sup> Aarhus Convention, Article 4(1)(b).

<sup>27</sup> Aarhus Convention, Article 4(1)(b)(i).

<sup>28</sup> Aarhus Convention, Article 4(1)(b)(ii).

<sup>29</sup> Aarhus Convention, Article 4(8).

<sup>30</sup> The Aarhus Convention Compliance Committee is the international committee tasked with reviewing compliance of the Parties to the Convention. For more information on the creation of the Aarhus Convention Compliance Committee, see UN ECE, Report of the First Meeting of the Parties Addendum, Decision I/7 ECE/MP.PP/2/Add.8 2 April 2004.

<sup>31</sup> *Aarhus Convention Compliance Committee Communication 2008/24* (Spain) ECE/MP.PP/C.1/2009/8/Add.1 24 August 2011.

<sup>32</sup> *Aarhus Convention Compliance Committee Communication 2008/24* (Spain) ECE/MP.PP/C.1/2009/8/Add.1 24 August 2011.

<sup>33</sup> Aarhus Convention, Article 4(3)(a), although if the authority believes another body holds the requested information it must transfer the request to that authority: Aarhus Convention, Article 4(5).

disclosing the information;<sup>34</sup> or if the request is “manifestly unreasonable” or too general.<sup>35</sup> While “manifestly unreasonable” is not defined in the Convention, complex or voluminous requests are not considered to be inherently unreasonable because public authorities can address the concerns raised by such requests by extending the 20 day time limit.<sup>36</sup>

The second category of exceptions is concerned with protecting a variety of interests which may be adversely affected by the disclosure of the information requested. These interests range from the confidentiality of public authority proceedings which are protected by law,<sup>37</sup> to international relations, national security, public security<sup>38</sup> and the right to a fair trial, the course of justice and the ability to conduct an enquiry that is criminal or disciplinary in nature.<sup>39</sup> In addition to these interests, the confidentiality of commercial or industrial information, when such protection is granted by law,<sup>40</sup> as well as intellectual property rights<sup>41</sup> are also protected. Finally, the rights of third parties who have provided information where they were not under an obligation to do so,<sup>42</sup> as well as the protection of the environment to which the information relates,<sup>43</sup> are further grounds that may justify non-disclosure. This category of exceptions must be interpreted restrictively when being applied by public authorities and is subject to a public interest test.<sup>44</sup>

In applying the above interest-based exceptions, public authorities must attempt to separate the information that can be disclosed to the applicant from the information which is excluded from disclosure.<sup>45</sup> More generally, when withholding environmental information from disclosure for any reason public authorities must state the reasons for the refusal, must provide information on any potential avenues of appeal for the applicant<sup>46</sup> and must provide the refusal in writing if either the request was made in writing or if the applicant requests that the refusal be in writing.<sup>47</sup>

### 3.3 The enforcement of the access-to-information rights

**Article 9 of the Aarhus Convention contains the third pillar of the Aarhus Convention – the Access to Justice pillar.** This pillar is designed to provide members of the public with a means of enforcing their Convention rights against the state and public authorities who fail to comply with the Convention’s procedural obligations.<sup>48</sup> In the context of the right of access to environmental information, this will often arise in circumstances where the public authority has failed to respond

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<sup>34</sup> Aarhus Convention, Article 4(3)(c).

<sup>35</sup> Aarhus Convention, Article 4(3)(b).

<sup>36</sup> *Aarhus Convention Compliance Committee Communication* 2004/03 (Ukraine) ECE/MP.PP/C.1/2005/2/Add.3 14 March 2005.

<sup>37</sup> Aarhus Convention, Article 4(4)(a).

<sup>38</sup> Aarhus Convention, Article 4(4)(b).

<sup>39</sup> Aarhus Convention, Article 4(4)(c).

<sup>40</sup> Aarhus Convention, Article 4(4)(d).

<sup>41</sup> Aarhus Convention, Article 4(4)(e).

<sup>42</sup> Aarhus Convention, Article 4(4)(f).

<sup>43</sup> Aarhus Convention, Article 4(4)(g).

<sup>44</sup> Aarhus Convention, Article 4(4).

<sup>45</sup> Aarhus Convention, Article 4(6).

<sup>46</sup> Aarhus Convention, Article 4(7).

<sup>47</sup> Aarhus Convention, Article 4(7).

<sup>48</sup> Aarhus Convention, Preambular Paragraph 18. And J Ebbesson, H Gaugitsch, J Jendroška, F Marshall and S Stec, *The Aarhus Convention: An Implementation Guide* (2<sup>nd</sup> edn, United Nations, 2014), 35.

to the request for environmental information within the 20 day time limit, where the public authority has refused to disclose some or all of the requested information,<sup>49</sup> or where the fee imposed by the public authority is perceived to be unreasonable.

Under Article 9 of the Aarhus Convention, states party to the Convention are obliged to provide a legally binding procedure to review the public authority's decision and treatment of the request for access to environmental information.<sup>50</sup> This review procedure is not required to be judicial, but if the state does provide a judicial review procedure, it must also provide a non-judicial review procedure.<sup>51</sup> In practice, public authorities implement an internal review procedure to fulfil this obligation. All review proceedings must be conducted by an independent and impartial body,<sup>52</sup> provide adequate and effective remedies,<sup>53</sup> be fair and equitable and make such decisions publicly available.<sup>54</sup> With regards to the timeliness and cost of review procedures, the obligations differ between judicial and non-judicial procedures. Judicial review procedures are obliged to be "timely and not prohibitively expensive."<sup>55</sup> In contrast, non-judicial review procedures must be expeditious and "free or inexpensive."<sup>56</sup>

The main objective of the pillar as a whole is to set out the procedural rights enabling the public to access environmental information, whether through proactive disclosure or upon request. This is clearly articulated in Article 4 (the passive right) but is less clear in Article 5.

#### 3.4 Implementation of the Convention within the European Union and elsewhere

In reviewing how the Aarhus Convention is implemented, a distinction has to be drawn between the Member States of the European Union, and the European Union itself as an entity. All Member States of the European Union have ratified the Aarhus Convention, which obliges them to implement environmental information regimes into their domestic legal systems. A parallel obligation to implement such a domestic environmental information regime is also imposed through EU Law under Directive 2003/4/EC, which copies the text of the Aarhus Convention into its provisions.

It should be noted that the Aarhus Convention has also been ratified by non-EU Member States, and these ratifying states are also obliged to implement environmental information regimes into their own domestic legal systems.<sup>57</sup> Furthermore, while a State which is not party to the Convention is not obliged to comply with the provisions of the Aarhus Convention, the latter has become the

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<sup>49</sup> Or potentially where the individual requesting the environmental information believes that the public authority has not disclosed all of the information that it holds in response to their request.

<sup>50</sup> Aarhus Convention, Article 9(1).

<sup>51</sup> Aarhus Convention, Article 9(1).

<sup>52</sup> Aarhus Convention, Article 9(1). In the context of an internal review procedure, this is achieved by ensuring that the members of staff conducting the internal review did not engage with the initial processing of the request for environmental information.

<sup>53</sup> This will often take the form of the authority disclosing the requested environmental information, if appropriate.

<sup>54</sup> Aarhus Convention, Article 9(4).

<sup>55</sup> Aarhus Convention, Article 9(4).

<sup>56</sup> Aarhus Convention, Article 9(1).

<sup>57</sup> The United Kingdom is special in this regard: while it left the European Union post-Brexit, prior it had implemented its domestic environmental information regime (the Environmental Information Regulations 2004 and the Environmental Information (Scotland) Regulations 2004) into domestic law.

normative instrument in the right of access to environmental information.<sup>58</sup> Therefore, some jurisdictions have broadly incorporated procedural elements from the Convention into their own information regimes.

In the case of the EU institutions, the 'Access to Information' pillar is captured in Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention.<sup>59</sup> In implementing the access to information pillar, Regulation 1367/2006 has co-opted the pre-existing information regime that was implemented through Regulation 1049/2001,<sup>60</sup> with additional obligations imposed on EU institutions regarding the proactive disclosure of environmental information,<sup>61</sup> guaranteeing the quality of information that the EU institutions hold<sup>62</sup> and mandating an overriding public interest in disclosure for environmental information relating to emissions in the environment.<sup>63</sup> These additional obligations have been implemented in order to comply with the corresponding obligations enshrined in the Aarhus Convention.

### 3.5 The Aarhus Convention and the development and promotional banks

When a state is party to the Aarhus Convention, the latter applies specifically to the state and all public authorities within the state, including state-owned enterprises, and private bodies performing public functions. Therefore, international development banks and promotional banks which are not state-owned are not obligated by the Convention. However, the European Investment Bank (EIB), which as a body of the European Union and obliged by Regulation (EC) No 1367/2006 to guarantee both active and passive rights to environmental information.

As the KfW Development Bank and its subsidiaries are state-owned, they are in principle also subject to the Aarhus Convention. BPF is also a State-owned bank and, therefore, in principle also subject to the Aarhus Convention.

While other development banks may not be legally obliged to follow the Aarhus Convention, the Convention exerts normative pressure in terms of a perceived standard for good governance and transparency. Therefore, many entities emulate aspects of the Convention within their own procedures.

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<sup>58</sup> For example, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), 4 March 2018, C.N.195.2018.TREATIES-XXVII.18 of 9 April 2018; Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (The Bali Guidelines), adopted by the Governing Council of UNEP, UNEPGCSS.XI/11, Decision SS.XI/5 pt A, 26 February 2010.

<sup>59</sup> ['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'](#), Official Journal of the European Union, L264/13, 25.9.2006.

<sup>60</sup> Regulation 1367/2006, Article 3.

<sup>61</sup> Regulation 1367/2006, Article 4. See Annex for full text of article 4.

<sup>62</sup> Regulation 1367/2006, Article 5.

<sup>63</sup> Regulation 1367/2006, Article 6, although this does not apply to every exemption.

### 3.6 Publication of project-related environmental information by the EIB

Environmental and social project related information is published by the EIB through its Public Register which can be accessed through the EIB's website. The following documents can be accessed:

- "EIB Environmental and Social Data Sheets (ESDS), which summarises the EIB's environmental and social appraisal of individual projects. ESDSs are published on the Public Register following project approval by the EIB Board of Directors.
- EIB Environmental and Social Completion Sheets (ESCS), which summarise the Bank's assessment of environmental and social issues at project completion stage and are published on the register when available after the completion of the EIB investment.
- Non-Technical Summaries (NTS) of Environmental Impact Assessments (EIA) carried out by the project promoters and published on the Register during project appraisal when received by the EIB.
- The equivalent of the NTS (for projects outside the EU), carried out by the project promoters and published on the Register during project appraisal when received by the EIB.
- Environmental and Social Impact Study/Statement (EIS) (for projects outside the EU), carried out by the project promoters and published on the Register during project appraisal when received by the EIB."<sup>64</sup>

In addition, project summaries of investment projects (including loans through financial intermediaries) can be accessed on the EIB's website.

According to the EIB, these summaries "are published systematically, at least 3 weeks prior to approval by the EIB Board of Directors, on the EIB website. However, a limited number of projects are not published before Board approval and, in some cases, not before signature to protect justified interests based on the exceptions for disclosure laid down in the EIB Transparency policy.

Project summaries generally include the name of the project, the project promoter or financial intermediary (for intermediated loans), the location of the project, the sector it represents, a project description, its objective(s), its environmental and, if relevant, social aspects, procurement data, proposed EIB finance, the total project cost, and the status of the project, noting whether it is "under appraisal", "approved" or "signed". When applicable, links are provided to documents/information published on the EIB Public Register (see above), as well as to other relevant documents pertaining to a project's environmental and social performance, as early as possible in the project cycle."<sup>65</sup>

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<sup>64</sup> European Investment Bank; Guide to accessing environmental and social information/documents held by the EIB, Downloaded from EIB's website on 22/2/2024.

<sup>65</sup> Ibid.

## 4 Overview of the financial entities covered by the study

This short section provides a brief overview of the three institutions whose practices regarding the publication of environmental information are reviewed in this study.

### 4.1 World Bank

The WB Group is a multilateral development institution that serves as a source of financial and technical assistance to countries globally. The World Bank Group comprises five institutions<sup>66</sup>:

1. **The International Bank for Reconstruction and Development (IBRD):** the IBRD provides loans and financial services to middle-income and creditworthy low-income countries. Its goal is to reduce poverty and support economic development.
2. **The International Development Association (IDA):** the IDA focuses on providing zero-interest loans and grants to the poorest countries, helping them undertake projects and initiatives that might otherwise be challenging to finance.
3. **The International Finance Corporation (IFC):** the IFC promotes private sector investment in developing countries. It works with businesses to create opportunities for sustainable development and contributes to poverty reduction through private sector engagement.
4. **The Multilateral Investment Guarantee Agency (MIGA):** MIGA facilitates foreign direct investment in developing countries by offering political risk insurance and credit enhancement.
5. **The International Centre for Settlement of Investment Disputes (ICSID):** ICSID provides facilities for the arbitration and conciliation of investment disputes between governments and foreign investors.

Together the IBRD and IDA make up the World Bank.

The World Bank offers a suite of financial products ranging from loans, credits and guarantees, to risk management products, contingent credit lines, and insurance/ reinsurance and derivatives. The World Bank team also offers advisory services to help clients on a variety of topics.<sup>67</sup> The clients of the World Bank are sovereign entities.<sup>68</sup>

The World Bank also provides financial support to financial intermediaries who in turn channel financial resources to a range of economic activities across industry sectors.

### 4.2 The Asian Development Bank

The ADB is a regional multilateral development institution dedicated to fostering economic growth, cooperation, and sustainable development in Asia and the Pacific. The ADB provides financial and technical assistance to its developing member countries.

The bank offers a range of products and services to address diverse development challenges, including loans, grants, technical assistance, guarantees, and debt management products. The ADB

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<sup>66</sup> World Bank (2023) [About the World Bank](#).

<sup>67</sup> The World Bank Treasury IBRD IDA - Financial Products & Client Solutions accessed on 17/11/2023 <https://pubdocs.worldbank.org/en/395251554903975524/BK-brochure-4-10-2019.pdf>.

<sup>68</sup> Financial support for the private sector is provided by IFC and MIGA of the World Bank Group.

supports projects in the public sector (sovereign financing) and the private sector (non-sovereign financing), spanning various sectors, such as infrastructure, education, healthcare, and environmental sustainability.

The ADB uses financial intermediaries to reach some of its target borrowers.

### 4.3 Kreditanstalt für Wiederaufbau

The KfW is the German promotional bank of which 80% is owned by the German Federal Government and 20% by the German federal states. Its main parts are:

- the **KfW** itself which engages mainly in promotional domestic activities;
- the **KfW Development Bank**, a business sector of KfW which supports development projects in a wide range of countries;
- the subsidiary **KfW IPEX-Bank** which provides export and project financing;
- the subsidiary **DEG (Deutsche Investitions- und Entwicklungsgesellschaft)** which finances and advises the private sector, mainly in developing countries and emerging economies but also in Germany and other industrialised nations;
- the subsidiary **KfW Capital** which promotes the expansion of the German and European venture capital and venture debt markets by investing in funds.

The promotional domestic activities of the KfW and the activities of the KfW Development Bank, the DEG and KfW IPEX Bank project finance are very similar to the range of activities undertaken by the EIB.

The KfW and its subsidiaries provide various types of debt and equity financing to their clients and often use financial intermediaries to reach their customers.

### 4.4 Banco Português de Fomento

BPF is the Portuguese State-owned promotional bank. It was created in November 2022 by the merger of two State-owned financing institutions, namely the PME Investimentos - Sociedade de Investimento SA and IFD - Instituição Financeira de Desenvolvimento SA. BPF is taking on the role of a Green Bank and focuses on five key areas: SMEs, mid-caps and large companies of structural importance for the economy, innovation, green finance, social impact and infrastructure.

It offers a range of warranty products, capital products, debt products and export credit.

## 5 The project cycle at the development and promotional banks

The project cycles at the WB, ADB and KfW are very similar to the EIB's project cycle shown in Figure 1.<sup>69</sup> Typically, the proposal stage is a **preparatory stage** involving, among others, a feasibility study and an assessment of the environmental risks of a project for which a party is seeking funding from a funding institution (henceforth the project sponsor). The project sponsor is typically responsible for the preparation of documents required by the funding institution. The latter may provide some support to the project sponsor during this stage. As of early May 2024, no public information was available on the typical project cycle at the BPF.

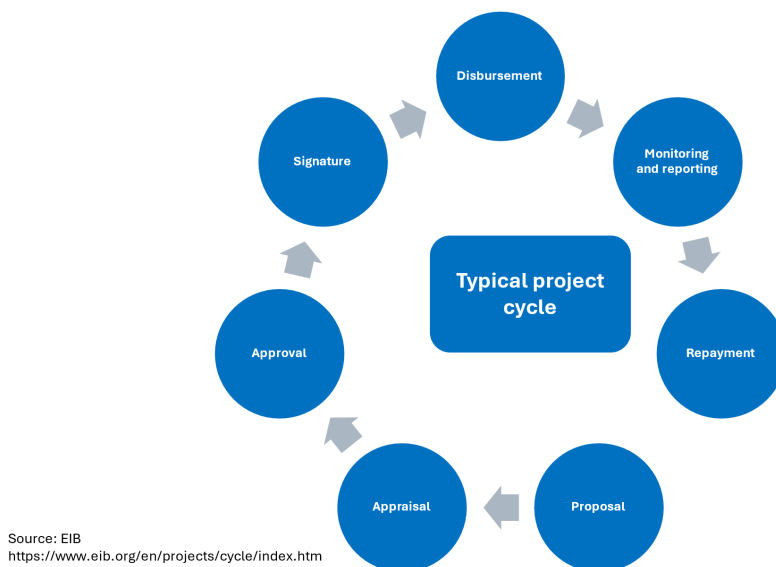
In the subsequent stage, the **appraisal stage**, the funding institution undertakes due diligence of the proposed project. This includes environmental due diligence.

The **approval stage** involves the final project negotiations with the project sponsor and the formal submission of the project for approval by the pertinent decision-making body within the institution.

Following the formal approval of a project, the next stages in the project cycle involve the **signing** of the project agreement between the funding institution and the project sponsor, and the actual **disbursement** of the funds.

A project will be **monitored** during its project implementation phase and often will be **evaluated** following completion. Often, the environmental impact of a project will be monitored and, following completion, assessed as part of the evaluation of the project.

**Figure 2** Project cycle at the EIB



<sup>69</sup> The precise project cycle of the WB and ADB are shown in Figures 5 and 6 in Annex 3.

To summarise, **assessments of the environmental aspects of a project are typically undertaken during the proposal, appraisal, and monitoring and reporting stages.**

A project sponsor generally has an obligation to make available to the project's stakeholders the environmental assessment(s) prepared during the proposal stage. Furthermore, the funding institution may make available this assessment to the public at large by publishing it on its website in addition to its internal environmental assessments. The next section reviews more extensively the type of environmental information published by the WB, ADB and KfW and the timing of such publication.

## 6 Environmental information published by the funding institutions and the project sponsors

This section provides information on the environmental information that the funding institutions publish, or require the project sponsors to publish, and the timing of such publication.

- First, it articulates the concept of environmental information under the Aarhus Convention (section 6.1).
- Next, for each of the three funding institutions covered by this report, it presents (sections 6.2 to 6.4):
  - the institution’s policy regarding the publication of environmental information;
  - the type of environmental information published by the institution at each stage of the project cycle; and
  - the timing of such publication.

### 6.1 Environmental information under the Aarhus rules

#### 6.1.1 Aarhus Convention definition of ‘environmental information’

As already noted in Box 2, under the Aarhus Convention, environmental information is defined as any information on:

“(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.”<sup>70</sup>

#### 6.1.2 Directive (2003/4/EC) definition of ‘environmental information’

The definition of ‘environmental information’ in the EU Directive is almost identical to the definition provided in the Aarhus Convention. However, the Directive adds slightly more detail -for example point d) regarding the reports on the implementation of environmental legislation, which is not specifically referred to in the Aarhus Convention.

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<sup>70</sup> Article 2.3 of Aarhus Convention.

According to the Access to Environmental Information Directive (2003/4/EC), "Environmental information shall mean any information in written, visual, aural, electronic or any other material form on:

- a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- d) reports on the implementation of environmental legislation;
- e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)."<sup>71</sup>



## 6.2 Overview of the World Bank policies and practices regarding environmental information

The World Bank is not bound by the Aarhus Convention. However, the World Bank has implemented its own internal policies related to the collection and publishing of environmental information that are comparable to the Aarhus rules.

These policies are set out in the **World Bank's Environmental and Social Framework (ESF)**.<sup>72</sup> The ESF was approved by the World Bank Board of Executive Directors in 2016 and replaced 10-policies typically referred to as the 'Safeguards'. These policies aimed to help ensure that Bank-financed projects would 'do no harm'. The first operational policy for environmental assessment of Bank-financed projects was introduced in 1989 and was gradually complemented by a further nine policies, including two social policies.<sup>73</sup>

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<sup>71</sup> Article 2d of Regulation (EC) No 1367/2006.

<sup>72</sup> The World Bank (2017); '[Environmental and Social Framework](#)'.

<sup>73</sup> E. Di Leva, C. (2021), 'The challenge and promise at the intersection of environmental and social policies: How the World Bank established a policy framework that fully integrates environmental and social concerns', *Global Social Policy*, 21(2), 344-348.

### 6.2.1 The WB's Environmental and Social Framework

The **Environmental and Social Framework (ESF)** became applicable to all investment project financing products initiated on or after October 2018. The ESF consolidates and modernises many of the requirements under the Environmental and Social Safeguards which had been in place until then.<sup>74</sup>

The **ESF consists of ten Environmental and Social Standards (ESSs)<sup>75</sup> that outline the obligations for borrowers and an Environmental and Social Policy for Investment Project Financing (IPF) that applies to the World Bank.<sup>76</sup>**

**The aim of the ESF is to protect people and the environment from potential adverse impacts that could arise from Bank-financed projects and to promote sustainable development.<sup>77</sup>** The key changes between the previous Safeguards and the ESF are the scope of environmental and social risks that must be considered (for example it added estimation of project greenhouse gas emissions, the sustainable management of living natural resources, and water management).<sup>78</sup> The ESF also include enhanced requirements for transparency and stakeholder engagement. These changes resulted in a closer alignment of the WB policy with the Aarhus Convention.

The Environmental and Social Policy for IPF sets out the Bank's mandatory requirements in relation to the projects it finances.<sup>79</sup> The Bank is required to support the Borrower in their application of the ten ESSs to their proposed project. This support includes: assisting the Borrower in identifying the appropriate tools and methods to assess and manage environmental and social risks; supporting them in undertaking stakeholder consultations. The WB also conducts its own due diligence on proposed projects in relation to environmental and social risks and monitors the project's environmental and social performance in line with the ESSs.

### 6.2.2 Type of environmental information published by the World Bank during the typical project cycle and timing of such publication

This section describes the environmental information published by WB during the different stages of the typical WB project cycle.

#### 6.2.2.1 Identification Stage

Once a project has been identified through collaboration between the Borrower and the World Bank, **two documents are prepared and disclosed to the public on the World Bank's Documents and Reports repository.<sup>80,81</sup>**

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<sup>74</sup> The World Bank (2019); '[Environmental and Social Framework: Factsheet](#)'. The ESF was approved by the WB Board of Directors in August 2016.

<sup>75</sup> The list of these standards is provided at Annex 4.

<sup>76</sup> The World Bank (2017); '[Environmental and Social Framework](#)'.

<sup>77</sup> The World Bank (2019); '[Environmental and Social Framework: Factsheet](#)'.

<sup>78</sup> The World Bank (2019); '[Environmental and Social Framework: Factsheet](#)'.

<sup>79</sup> The World Bank (2017); '[World Bank Environmental and Social Policy for Investment Project Financing](#)'.

<sup>80</sup> The World Bank (2023); '[World Bank Project Cycle](#)'.

<sup>81</sup> The World Bank (2023); '[Documents & Reports - All Documents](#)'.

These documents include the **Project Information Document**, which provides a comprehensive overview of the project's scope, and an **Environmental and Social Review Summary (ESRS)**.<sup>82</sup> A 'concept' version of the ESRS is written and published at this stage and is later updated at the project appraisal stage (see section 6.2.2.3).

Desk research of published documents relating to current World Bank-funded projects shows that the ESRS includes various elements, namely including<sup>83</sup>:

1. **Basic Project Data:** This provides essential project information such as the country and region where the project is located, the project name, the Borrower, and the total cost.
2. **Summary Description of the Proposed Project:** A concise overview of the project, outlining its key features and objectives.
3. **Environmental and Social Overview:** This provides insights into the project's environmental context, including detailed project location and relevant physical characteristics. It also evaluates the borrower's institutional capacity to handle environmental aspects. This generally includes quantitative statistics on the current environmental setting e.g. population, GDP, and project-specific statistics. The level of detail differs across projects (however there is a maximum character limit of 2,000).
4. **Environmental and Social Risk Classification (ESRC):** This assigns a risk category to the proposed project at this stage. The levels of risk are categorised as 'Low', 'Moderate', 'Substantial', or 'High'. When establishing the suitable risk classification, the Bank will consider pertinent factors, including the project's type, location, sensitivity, and scale, as well as the potential environmental and social risks and impacts in terms of their nature and magnitude. Additionally, the Bank will assess the capacity of the Borrower, or any other entity responsible for project implementation, in effectively managing these environmental and social risks and impacts.<sup>84</sup> In the ESRS, the environmental information that supports the risk classification is provided qualitatively in a short description (an example is provided in Box 3). The information broadly covers the main environmental risks and the expected impacts, however, is typically more qualitative at this stage. The level of detail differs across projects (however, there is a maximum character limit of 2,000).
5. **Relevance of Environmental and Social Standards (ESSs):** This identifies the applicable ESSs that the Borrower has to meet under the ESF.
6. **Overview of the Required Environmental and Social Risk Management Activities:** This provides a summary of the planned analyses the Borrower is required to carry out in terms of environmental and social risk assessment by the Appraisal stage.
7. **Requirements or Issues to be Resolved Before Project Appraisal:** This section outlines the proposed actions to be completed before obtaining Bank Board Approval. It includes tasks like preparing and disclosing the Environmental and Social Management Plan (or Impact Assessment) (ESMP) and Stakeholders Engagement Plan (SEP). It may also highlight potential issues that may need to be addressed in the Appraisal ESRS, ensuring that the project minimises environmental and social risks and impacts.

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<sup>82</sup> The World Bank (2023); '[World Bank Project Cycle](#)'.

<sup>83</sup> The headings and elements included in the Environmental and Social Review Summary vary slightly by project.

<sup>84</sup> The World Bank (2017); '[World Bank Environmental and Social Policy for Investment Project Financing](#)'.

**Box 3 Example of commentary supporting the Environmental Risk Classification<sup>85</sup>****“Environmental Risk Rating****Moderate**

*The environmental risks of the project are deemed moderate. The main environmental risks are related to the small-scale civil works within the existing buildings of [...] for the installation of equipment and supporting IT infrastructure as part of Component 1 which will be associated with localized noise, vibration, dust and other air pollution and limited health and safety risks. There will be indirect impacts related to generation of construction wastes, -waste could be generated from the IT equipment, and water pollution during construction and operation of facilities. The project will include the removal and replacement of old and obsolete computers and cables resulting in the generation of e-wastes. Guideline for development of an e-waste management plan will be provided as part of Environmental and Social Management Plan which will include the steps, procedures and timeline that will be followed for wastes minimizations, generation, segregation, labelling, storage, evacuation and disposal in a manner that is consistent with Good International Industry practices (GIIP) and consistent with the ESF.*

**6.2.2.2 Preparation Stage**

In accordance with the ESF and preceding approval by the Bank’s Board, **Borrowers are required to prepare an Environmental and Social Impact Assessment (ESIA)** (or Management Plan).

The Impact Assessment is undertaken by the Borrower and involves a comprehensive evaluation of potential environmental impacts. The scope and detail of the ESIA is to be proportional to the level of potential risks and impacts. The World Bank considers various environmental risks, including those outlined in the World Bank Group Environmental, Health and Safety Guidelines. These risks encompass environmental quality, occupational health and safety (including physical/chemical/biological hazards), and construction and decommissioning.<sup>86</sup> Additionally, the World Bank includes risks related to community safety (such as dam safety and pesticide use), climate change, transboundary or global risks, threats to the protection of natural habitats and biodiversity, and risks related to ecosystem services and the utilisation of living natural resources like fisheries and forests.<sup>87</sup> This list of environmental information parallels, albeit in more detail, the type of environmental information specified in the Aarhus rules (see section 3.1).

The ESF also requires a thorough examination of monitoring, preventative measures, and mitigation strategies to be implemented throughout the project’s lifecycle with regards to adverse environmental impacts. Furthermore, it identifies ways of improving the project and considers project alternatives, while seeking to enhance the positive impacts of the project.

For those projects with anticipated significant adverse environmental and social impacts, one focus of the environmental and social assessment is the generation of appropriate environmental and social baseline data, the identification and analysis of impacts, and the development of appropriate

<sup>85</sup> The World Bank (2023); ‘[Documents & Reports - All Documents](#)’.

<sup>86</sup> <https://www.ifc.org/content/dam/ifc/doc/2000/2007-general-ehs-guidelines-en.pdf>.

<sup>87</sup> The World Bank (2017); ‘[World Bank Environmental and Social Policy for Investment Project Financing](#)’.

mitigation measures.<sup>88</sup> The collected baseline information must provide a sufficient level of detail to identify and classify risks, impacts and mitigation measures. The ESIA should document any data limitations, such as the extent and quality of available data, assumptions, and key data gaps. If the initial scoping process indicates that the project will have no or minimal potential risks and adverse impacts, the Borrower will document this scoping process and its conclusions.

Borrowers must incorporate the collected baseline data in the ESIA. ESIA reports also include the methodology by which the baseline data is obtained (e.g. primary data through fieldwork, secondary data through review of documents, or stakeholder consultations). Typically, ESIA reports tend to provide baseline data, and then written assessment of potential impacts. The World Bank does not publish a list of all the environmental information that must be collected, but only specifies that the data have to be sufficient to support the identification and classification of the risks. Some common examples of baseline data that is collected include<sup>89</sup>:

- Air quality (e.g. spot particulate (PM10) measurements, dust suspension)
- Noise levels
- Soils and geology
- Climate and temperature (e.g. precipitation, wind speed), and future climate projections
- Water (e.g. resources and water quality assessment)
- Traffic and transport
- Waste
- Biodiversity (e.g. distance from protected areas)
- Topography

Overall, the extent, depth, and scope of the analysis in the Impact Assessments vary depending on the project's nature, scale, and potential impacts. When the Bank is supporting financial intermediaries, in determining the risk classification, the Bank also takes into account the existing portfolio of the financial intermediary and the risk associated with their proposed subprojects.<sup>90</sup>

For projects that have been classified as having a “High” or “Substantial” environmental risk, the Borrower is required to provide, as agreed upon with the Bank, documentation pertaining to the project's environmental and social risks and impacts before project appraisal.<sup>91</sup> The Bank then applies their Environmental and Social Policy with regards to “High” or “Substantial” risk projects (see Box 4).

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<sup>88</sup> The World Bank (2018); [ESS1: Assessment and Management of Environmental and Social Risks and Impact](#) .

<sup>89</sup> The World Bank (2023); [‘Documents & Reports - All Documents’](#) .

<sup>90</sup> The World Bank (2018); [‘Environmental and Social Framework for IPF Operations. ESS9: Financial Intermediaries’](#) .

<sup>91</sup> The World Bank (2018); [‘Environmental and Social Framework for IPF Operations. ESS10: Stakeholder Engagement and Information Disclosure, Guidance Note for Borrowers’](#) .

#### Box 4 Environmental and Social Policy with regards to disclosure of documentation of High and Substantial risk projects<sup>92</sup>

*“The Bank will disclose documentation relating to the environmental and social risks and impacts of High Risk and Substantial Risk projects prior to project appraisal. This documentation will reflect the environmental and social assessment of the project and be provided in draft or final form (if available). The documentation will address, in an adequate manner, the key risks and impacts of the project [...], the Bank will assist the Borrower in identifying appropriate methods and tools to assess and manage the potential environmental and social risks and impacts of the project.”*

#### Environmental information that borrowers must make available to stakeholders during the preparation stage

The Bank requires that **Borrowers provide sufficient information about the potential environmental and social risks and impacts of the project for the Borrower’s consultations with its stakeholders.** The information has to address potential risks and impacts of the project on local communities, and the proposals for mitigating these, highlighting potential risks and impacts that might disproportionately affect vulnerable and disadvantaged groups and describing the differentiated measures taken to avoid and minimize these.

Information provided by the Borrower on the potential environmental risks and impacts of a project must be disclosed in a **timely manner**, in an **accessible place** and in a **form and language understandable** to the **project-affected parties** and **other interested parties** as set out in the tenth ESS standard (ESS10).<sup>93</sup> Under ESS10, ‘project-affected parties’ are defined as individuals or groups who are affected or likely to be affected by the project and ‘other interested parties’ are defined as individuals or groups who may have an interest in the project.<sup>94</sup>

In practical terms, the policy requires that the information has to be disclosed in relevant local languages and in a manner that is accessible and culturally appropriate, taking into account any specific needs of groups that may be differentially or disproportionately affected by the project or groups of the population with specific information needs (such as, disability, literacy, gender, mobility, differences in language or accessibility).

The World Bank does not provide details on the precise environmental information that should be shared, but notes that it is sufficient to properly inform the project-affected parties and other interested parties.

#### Environmental information that borrowers must provide to the WB during the preparation stage

As already noted, borrowers are required to carry out an Environmental and Social Impact Assessments (ESIA) which should be proportional to the level of potential risks and impacts. The Borrower is responsible for ensuring that all relevant information is provided to the Bank so that the Bank can fulfil its responsibility to undertake environmental and social due diligence in accordance

<sup>92</sup> The World Bank (2017); [‘World Bank Environmental and Social Policy for Investment Project Financing’](#).

<sup>93</sup> The World Bank (2017); [‘World Bank Environmental and Social Policy for Investment Project Financing’](#).

<sup>94</sup> The World Bank (2018); [‘Environmental and Social Framework for IPF Operations. ESS10: Stakeholder Engagement and Information Disclosure, Guidance Note for Borrowers’](#).

with the World Bank Environment and Social Policy for Investment Project Financing. For High Risk and Substantial Risk projects, the Borrower has to provide to the Bank and disclose documentation, as agreed with the Bank, relating to the environmental and social risks and impacts of the project prior to project appraisal.<sup>95</sup>

### Information the World Bank must publish during the preparation stage

The Bank applies the World Bank Policy on Access to Information to all documents provided to it by the Borrower.<sup>96</sup>

This means that the Bank will publish all documents provided to it by the Borrower. The **Bank will disclose documentation relating to the environmental and social risks and impacts of High Risk and Substantial Risk projects prior to project appraisal**. This documentation will reflect the environmental and social assessment of the project and be provided in draft or final form (if available).

The Bank classifies all projects into one of four risk categories (high, substantial, moderate and low). The **Bank will disclose the project's classification they make and the basis for that classification on the Bank's website and in project documents**. The Bank will review the risk classification assigned to the project on a regular basis, including during implementation, and will change the classification where necessary. Any change to the classification will be disclosed on the Bank's website.

The Bank's Access to Information Policy does not specify the format by which information should be disclosed. The Policy outlines principles regarding disclosure, including that access to information to the public should be maximised, and provides a comprehensive list of exceptions.

### 6.2.2.3 Appraisal Stage

During the appraisal stage, the Borrower and Bank conduct a thorough review of the progress made in the preceding stages and collaborate to address any remaining questions around the project.<sup>97</sup> This process involves reaching an agreement on the intended project outcomes, timeline and the public disclosure of key documents.

**The Environmental and Social Review Summary (previously developed at the Identification stage) is updated at this stage and disclosed on the Bank's Documents and Reports repository. The Appraisal Environmental and Review Summary will reflect any updates following the Environmental and Social Impact Assessment (or Management Plan), including updates to the risk classification and the basis for doing so.**

Based on the desk research, it appears a key difference from the Concept ESRS is the inclusion of a short description of the environmental and social analyses that has been conducted and the mitigation plans that have been prepared with respect to the environmental and social risks.<sup>98</sup>

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<sup>95</sup> <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf#page=111&zoom=80>.

<sup>96</sup> The World Bank (2017); '[Environmental and Social Framework](#)'. The WB Access to Information policy, which was adopted in 2010, aims to maximise the access of information to the public and provide clear procedures for making information available.

<sup>97</sup> The World Bank (2023); '[World Bank Project Cycle](#)'.

<sup>98</sup> The World Bank (2023); '[Documents & Reports - All Documents](#)'.

#### 6.2.2.4 Negotiation and Board Approval Stage

After reaching an agreement on all project particulars, the Bank team proceeds to complete the **Project Appraisal Document**.<sup>99</sup> For High risk and Substantial Risk projects, the Project Appraisal Document will specify the project-related documents that will be prepared and disclosed following Board approval.<sup>100</sup>

Desk research of Project Appraisal Documents found that the document includes an 'Environment and Social' section. This section provides a summary of the main environmental risks identified in the previous stages. Furthermore, it outlines the risk classification of the project alongside some commentary which supports the classification. While it is not clear exactly what the thresholds are that determine the risk classifications, comparisons of the commentary supporting the classifications can provide some understanding of how the risk classification is decided (see Box 5).

##### Box 5 Examples of commentary supporting environmental risk classifications

**Low:** *"The Project does not finance land acquisition, and does not include remodelling, rehabilitation, or construction of new infrastructure. The Project's actions will be carried out within existing facilities, and will not intervene in sensitive or protected areas, nor will its actions or effects put biodiversity or cultural heritage at risk. The overall risks and potential adverse impacts on the environment are likely to be minimal or negligible."*

**Moderate:** *"The potential environmental risks and impacts of activities are predictable, temporary and/or reversible, low in magnitude, site-specific without the likelihood of impacts beyond the actual footprint of the project and have a low probability of serious adverse effects on human health and the environment."*

**Substantial:** *"The project's E&S risks are rated 'substantial' mainly due to the risks and impacts associated with the generation and management of medical, solid and liquid wastes from delivery of services. The project will finance both outhouse and in-house management of medical waste."*

#### 6.2.2.5 Implementation Stage

Following Board approval, the Borrower (or responsible agency) implements the project with the support of the Bank. The implementation of the project includes any agreed-upon environmental mitigation measures as outlined in the environmental and social management plan.<sup>101</sup>

The Borrower, or agency responsible for implementing the project, provides regular updates to the Bank on the project's progress and outcomes. The Bank and Borrower meet **at** least twice annually to conduct a comprehensive review of the project's progress. Following this review, the Bank compiles an **Implementation Status and Results (ISR)** report.<sup>102</sup> The World Bank **then publishes a**

<sup>99</sup> The World Bank (2023); '[World Bank Project Cycle](#)'.

<sup>100</sup> The World Bank (2017); '[World Bank Environmental and Social Policy for Investment Project Financing](#)'.

<sup>101</sup> The World Bank (2023); '[World Bank Project Cycle](#)'.

<sup>102</sup> The World Bank (2023); '[World Bank Project Cycle](#)'.

'Disclosable Version of the Implementation Status and Results' report on their Documents and Reports repository.

Desk research found that, within the disclosable ISR reports, there is an 'Environment and Social' section which includes the environmental risk rating at approval, the previous rating (i.e. in the last ISR report) and the current rating. Typically there was a lack of commentary to support the risk classification or change of classification. The mention of 'disclosable' in the document title suggests that some details may have been redacted in the published version.

#### 6.2.2.6 Completion/Validation and Evaluation Stage

Following a project's completion, the Bank, in collaboration with the Borrower and various other stakeholders, prepares an **Implementation Completion and Results** (ICR) report.<sup>103</sup>

Desk research noted that part of the ICR report includes a summary of the project's overall environmental impacts and a summary of the adherence to the management plan regarding the environmental impacts. This evaluation also encompasses any changes in the risk classification that occurred during the project's implementation and outlines the strategies employed for risk management, typically documented within a section titled 'Environmental, Social, and Fiduciary Compliance.'

The Independent Evaluation Group (IEG) assesses the effectiveness of the World Bank Group's development work. IEG operates autonomously from the World Bank Group's management and directly reports to the Executive Board. IEG's responsibilities encompass various forms of evaluation, validation, and synthesis activities.

The IEG also validates all self-evaluations performed by the World Bank at the project-cycle level and also conducts selected project-level evaluations through preparation of **Project Performance Assessment Reports**. Some of these reports are disclosed publicly on the Bank's Documents and Reports repository, however it is unclear what determines whether the reports are disclosed or not.

Desk research of some available Project Performance Assessment reports showed that the IEG tends to summarise the main environmental risks and the information that was identified in previous reports and offers an overall assessment (see Box 6 for an example from a Project Performance Assessment Report).

#### Box 6 Example text from a Project Performance Assessment Report

*"The main risk was related to possible adverse effects from the use of pesticides, but there were no reports of significant damage from this source. This assessment found no evidence to dispute the statement in the Implementation Completion and Results Report that the project complied with all the environmental requirements related to these safeguard policies (World Bank 2020)."*

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<sup>103</sup> The World Bank (2023); [World Bank Project Cycle](#).

### 6.3 Concluding remarks regarding the publication of environmental information by the WB

In comparison to the EIB, the WB publishes a large amount of project-related information during the different stages of the project cycle (see Figure 3). Moreover, the information is also published in a much more timely manner than the EIB's publication of project-related environmental information. Overall, the WB's approach represents a best practice in the area of active publication or project-related environmental information.

**Figure 3 Overview of the reports and documents with environmental information published by WB during the project cycle**

Stage in the project		Environmental information published by the WB
Proposal	Identification	Environmental and Social Summary (ESRS)
	Preparation	Environmental and Social impact Assessment (ESIA) prepared by the project sponsor and any related /supporting documents.  Classification by the WB of the environmental risk of a project  For high and substantial risk projects, the information has to be published before the appraisal stage
Appraisal		Appraisal Environmental and Social Review Summary (which is an updated Environmental and Social Summary (ESRS))
Approval		Project Appraisal Document. For High risk and Substantial Risk projects, the Project Appraisal Document will specify the project-related documents that will be prepared and disclosed following Board approval
Signature		
Disbursement		
Monitoring and Reporting	Implementation	Bi-annual disclosable version of the Implementation Status and Result report. This report includes environmental risk rating at approval, previous rating and current rating
	Completion	Implementation and Completion Report

Stage in the project		Environmental information published by the WB
	Evaluation	Project Performance Assessment Report



## 6.4 Overview of ADB policies related to environmental information

### 6.4.1 The ADB's Environmental Safeguards

The Asian Development Bank's (ADB) has had a **Safeguard Policy Statement (SPS)** in place since 2010 which governs the ADB's environmental and social safeguards.<sup>104</sup> The SPS covers three areas: the environment, involuntary resettlement and indigenous peoples. These safeguards consist of a comprehensive framework of policies, practices, legal structures and institutions established to mitigate or prevent adverse environmental and social impacts from ADB-financed projects.<sup>105</sup>

The SPS sets out the objectives, scope and requirements for the three safeguard areas. The SPS applies to all ADB-financed projects, both public and private, as well as project components that are associated with the ADB-supported projects, regardless of whether or not they are financed by the ADB.<sup>106</sup>

Under the SPS for Environmental Safeguards, borrowers are required to identify potential environmental risks and their likely impacts, explore alternative approaches, and formulate and implement effective management plans for mitigating or preventing adverse environmental impacts.<sup>107</sup> Furthermore, borrowers are required to engage in consultations with affected parties and **disclose relevant information** in a timely manner and in accessible language.

The documents that are provided by borrowers throughout the course of a project to the ADB are disclosed to the public in accordance with the ADB's Access to Information Policy.

The Access to Information Policy follows a core principle of clear, timely and appropriate disclosure and encompasses various principles related to sharing information with external stakeholders.

Some of the key principles of the Policy include:

- Clear, timely and appropriate disclosure;

<sup>104</sup> Asian Development Bank (2012); 'Environment Safeguards: A Good Practice Sourcebook (Draft Working Document)'.

<sup>105</sup> Asian Development Bank (2023); '[Safeguards](#)'.

<sup>106</sup> Asian Development Bank (2012); 'Environment Safeguards: A Good Practice Sourcebook (Draft Working Document)'.

<sup>107</sup> Asian Development Bank (2009); '[Safeguard Policy Statement](#)'.

- A presumption in favour of disclosure, with exceptions being limited;
- Proactive disclosure, where the ADB actively shares the information in a timely manner to facilitate public participation in decision-making processes;
- Providing information to affected parties and other stakeholders and ensuring a two-way communication regarding ADB projects. This engagement is to be carried out within specified timeframes, using relevant language(s) and in a way that allows affected parties and other stakeholders to contribute meaningfully to the project planning and implementation. In terms of timeliness, ADB always recommends disclosing information as early as possible. There exists a hierarchy of mitigation strategies in relation to environmental risks, with avoidance being a key one. Failing to disclose information in a timely manner might limit the ability to explore the full range of avoidance measures. If consultations occur after designs have been finalised, there's minimal flexibility in altering them. Alternative analysis heavily relies on consultation and is a crucial step for achieving optimal safety and safeguarding critical environments.

The Office of the Secretary (OSEC) monitors compliance with the Access to Information Policy. The ADB officials noted that when dealing with the private sector, the ADB often collaborates with other partners who have oversight of the project, for example the International Finance Corporation (IFC) or the European Bank for Reconstruction and Development (EBRD).

The scope of environmental risks considered by the ADB is the same as those considered by the World Bank as the ADB expects their projects to meet the World Bank Group's Environmental, Health and Safety Guidelines.<sup>108</sup> Therefore, the ADB also covers the environmental information included in the **Aarhus Convention**.

### 6.4.2 Type of environmental information published by the ADB during the typical project cycle and timing of such publication

#### 6.4.2.1 Project identification stage

Early in the project cycle, usually at the identification stage, the ADB and the borrower will collaborate to conduct a project screening and categorisation in relation to the project's potential environmental impact.<sup>109</sup> The screening process involves employing a Rapid Environmental Assessment (REA) checklist, comprising questions related to the sensitivity and vulnerability of environmental resources in the proposed project area and the potential for the project to result in adverse environmental impacts.

The screening and categorisation of projects is conducted by a Safeguard specialist – a project team from the ADB will have an Environment Safeguards specialist and a Social Safeguards specialist who leads on the screening and categorisation of a project. This classification is then endorsed by the project team leader. An example of the template for the REA Checklist that was used to screen a current ADB project is provided at Annex 5. Desk research indicates that the checklist is relatively standardised across projects. Consultation with the ADB also indicated that the process is consistent, and the process is also digitised which aids in its consistency.

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<sup>108</sup> Asian Development Bank (2012); 'Environment Safeguards: A Good Practice Sourcebook (Draft Working Document)'.

<sup>109</sup> Asian Development Bank (2012); 'Environment Safeguards: A Good Practice Sourcebook (Draft Working Document)'.

While the template of the REA checklist is disclosed, it does not appear that a completed checklist is disclosed on the ADB website. Consultations with the ADB confirmed that completed REA Checklists are not disclosed due to the confidential information that is collected. However, the outcome of the REA checklist (i.e. the risk categorisation rating) is disclosed.<sup>110</sup> On the ADB's list of projects on their website, the environmental risk classification that can be obtained by selecting the 'Project Data Sheet' (PDS) reflects the result of the screening process.

Two documents are disclosed at the preparation stage of projects including an Initial Poverty and Social Analysis and a Technical Assistance Report. Environmental information is not mentioned in detail in these reports.

Based on the screening, projects are assigned an environmental risk category. The risk category that the project is assigned to determines the extent and scope of the environmental assessment that is required to be undertaken (see Annex 6 for the typology of environmental risk rating used by the ADB).

### 6.4.2.2 Project design and preparation stage

Borrowers are required to conduct an environmental assessment for projects classified as Category A or category B projects. For Category A projects (i.e. the projects with the highest risk rating), a full-scale Environmental Impact Assessment (EIA) is required whereas Category B projects require only an Initial Environmental Examination (IEE).<sup>111 112</sup>

Desk research of available reports on the ADB's website suggested that the scope and content of the two assessments are very similar. The notable difference between EIAs and IEEs tended to be the level of detail, whereby the full-scale impact assessments were a lot larger (in many cases comprising of several volumes).

Desk research found that the general features of an environmental assessment as required by the ADB include:

- **Policy, legal and administrative context:** describes the relevant national laws, regulations and policies that are relevant to the project;
- **Project description:** provides a summary of the project activities and operations and the project location;
- **Baseline environment:** provides a description of the current environmental and social conditions, a common framework that was used in the current condition of the land, water, air and people. This includes quantitative data where possible;
- **Impact and risk assessment:** provides a thorough analysis of all potential project impacts on the environment and assesses the extent of the risk as well as the borrower's capacity to manage the risks;
- **Environmental Management Plan (EMP):** provides a detailed description of proposed mitigation measures, monitoring plans, stakeholder engagements, capacity-building and training, management responsibilities and cost estimates for these activities.

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<sup>110</sup> On the list of projects on ADB's website, the environmental risk classification can be obtained by selecting the 'Project Data Sheet' for individual projects.

<sup>111</sup> Asian Development Bank (2009); ['Safeguard Policy Statement'](#).

<sup>112</sup> Asian Development Bank (2013); Operations Manual, Bank Policies (BP), OM section F1/OP.

As in the case of WB funding, the assessment must include baseline data which describes (quantitatively, where possible) the relevant physical, biological, and socioeconomic conditions within the project area. The ADB does not list all of the data that must be included, only that it is appropriate to assess all of the relevant risks and impacts. However, the ADB has published 'good practice guidance' on what is deemed an appropriate and inappropriate level of detail in the assessment of the risks based on the baseline data.

Desk research of EIA and IEE reports available on the ADB's website suggests that the scope and content of the two assessments are very similar. The notable difference between EIAs and IEEs tend to be the level of detail, with the full-scale impact assessments being markedly more extensive (in many cases comprising of several volumes).

### **Information that Borrowers have to publish<sup>113</sup>**

Under the Safeguard Policy Statement, Borrowers are required to provide to stakeholders relevant environmental information from the EIA or IEE during project preparation in a timely manner, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. For illiterate people, other suitable communication methods are to be used.

The ADB does not have specific requirements for the environmental information that must be disclosed to the affected people, only that the information is relevant and adequate to allow for meaningful consultation. According to the ADB, meaningful consultation is a process that (i) starts early in the project preparation stage and is ongoing throughout the project; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in a way that is not intimidating nor coercive; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making.<sup>114</sup> Consultations are to be carried out in a manner commensurate with the impacts on affected communities. The consultation process and its results are to be documented and reflected in the environmental assessment report.

### **Information that borrowers have to provide to the ADB**

The Borrower will submit to the ADB the following documents for disclosure on ADB's website:

- For category A projects, a draft EIA report at least 120 days prior to ADB Board consideration;
- A draft IEE report for category B projects;
- A draft environmental assessment and review framework (EARF) before project appraisal, where applicable;
- the final EIA/ IEE reports.

### **Information that the ADB will publish on its website**

- A draft EIA report at least 120 days prior to ADB Board consideration;
- A draft environmental assessment and review framework (EARF) before project appraisal;

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<sup>113</sup> Asian Development Bank (2013); *ibid.*

<sup>114</sup> Asian Development Bank (2009); ['Safeguard Policy Statement'](#),

- A final EIA report;
- A final IEE report. The draft IEE report is provided on request to project stakeholders before project approval by the Board. If the final IEE is not available upon Board approval, the draft IEE is posted on the ADB's website upon Board approval;

### 6.4.2.3 Project appraisal and Board approval stage<sup>115</sup>

During the project appraisal stage, the ADB appraises the project and conducts due diligence to ensure that the project meets all the required safeguards and any outstanding applicable safeguards issues are resolved. No specific environmental report is generated by this stage and the Board approval stage.

The report and recommendation of the President to the Board for approval by the Board of an ADB project are published on the ADB's website after approval of the project by the Board. Such reports typically provide some information on how the project meets the ADB's environmental safeguards and the requirements of national laws and regulations.

### 6.4.2.4 Monitoring and evaluation of projects stage<sup>116</sup>

#### Monitoring

The ADB's SRS requires ongoing environmental monitoring during project implementation.<sup>117</sup> Borrowers are required to evaluate the performance of the project against standards and actions that were agreed upon in the previous stages. Monitoring activities should also provide environmental data to support compliance as well as detect non-compliance issues.

Under the SRS, borrowers are required to report their environmental monitoring results to the ADB and external stakeholders on a regular basis.<sup>118</sup> For Category A projects borrowers are required to provide monitoring reports at least semi-annually during construction/setting up of the project and annually during operation. For Category B projects, the ADB requires periodic monitoring reports at a frequency deemed appropriate by the ADB. The reports are published by the ADB.

During project implementation, environmental monitoring reports are disclosed on the website, as well as any supplementary reports and corrective action plans, if required.<sup>119</sup>

#### Evaluation

Two types of project evaluations are undertaken at the ADB, namely self-evaluations by those responsible for designing and implementing a project and independent evaluations by the Independent Evaluation Department (IED).<sup>120</sup> Self-evaluations (i.e. Project completion reports) of sovereign operations are undertaken 1–2 years after their completion while in the case of non-sovereign operations they are undertaken at a relevant stage of the operations as determined by

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<sup>115</sup> Asian Development Bank (2013), *ibid*.

<sup>116</sup> Asian Development Bank (2013), *ibid*.

<sup>117</sup> Asian Development Bank (2009); '[Safeguard Policy Statement](#)'.

<sup>118</sup> Asian Development Bank (2009); '[Safeguard Policy Statement](#)'.

<sup>119</sup> Asian Development Bank (2012); 'Environment Safeguards: A Good Practice Sourcebook (Draft Working Document)'.

<sup>120</sup> <https://www.adb.org/who-we-are/evaluation/overview>.

the ADB.<sup>121</sup> These reports are validated by the IED. The results of this validation exercise are reported in a validation report produced by the IED.

The project completion reports published by the ADB on its website upon circulation to the Board.

The IED evaluation reports are published on the IED's website upon circulation to Management and the Board, together with responses received to its reports from ADB Management, IED comments on the Management response, if any, and Chair's summaries of DEC discussions pertaining to its reports. For evaluations of non-sovereign operations, a redacted version is disclosed on the IED's website, excluding commercially sensitive and confidential business information. The IED also publishes the final version of the validations report of self-evaluation reports directly on the IED's website upon their approval.

## 6.5 Concluding remarks regarding the publication of environmental information by the ADB

As in the case of the WB, the ADB publishes a large amount of environmental project-related information during the different stages of the project cycle in comparison to the EIB (see Figure 4). Moreover, the information is also published in a much timelier manner than similar information by the EIB. Overall, the ADB's approach represents together with the WB a best practice in the area of active publication or project-related environmental information.

**Figure 4 Overview of the reports and documents with environmental information published by ADB during the project cycle**

Stage in the project		Environmental information published by the WB
Proposal	Project screening	Project Data Sheet (with the environmental risk rating)
	Project Design and Preparation	Draft environmental impact assessment (EIA) for category A projects (120 days prior to Board consideration)
		Draft environmental assessment and review framework (EARF) before project appraisal
		Final EIA or final Initial Environmental Examination (IEE)
Appraisal		
Approval		Report and recommendation of the President to the Board
Signature		
Disbursement		
Monitoring and Reporting	Implementation	In the case of Category A projects, bi-annual environment report during the construction phase and

<sup>121</sup> Asian Development Banks (2013); OPERATIONS MANUAL BANK POLICIES (BP), Section K1/BP The self-evaluation reports.

Stage in the project		Environmental information published by the WB
		annual environment report during the operation phase In the case of Category B projects at a frequency determined by the ADB
	Completion	Project Completion Report (self-evaluation)
	Evaluation	Project Evaluation Report



## 6.6 Overview of KfW policies regarding project-related environmental information

### 6.6.1 The environmental assessment process of the KfW Development Bank and publication of project-related information

#### 6.6.1.1 The process

All funding activities of KfW Development Bank have to undergo an Environmental and Social Due Diligence (ESDD). According to the Bank's Sustainability Guideline of June 2023<sup>122</sup>, the ESDD is first and foremost a management tool to steer and shape financial cooperation (FC) measures over their entire life cycle (i.e. from preparation to completion). The ESDD is undertaken with the involvement of KfW Development Bank environmental and social experts.

The ESDD process involves a preliminary appraisal (screening) to evaluate the potential environmental and social risks and determine whether an in-depth assessment is required. The assessment of the environmental and social impact risks considers the whole project, even if KfW Development Bank finances only a component of the project.

The environmental risk of all FC-measures is rated on a scale of "C" (low risk) to "A" (high risk) (see Annex 7) for details:

If it is determined that an in-depth assessment is required, the next stage of the ESDD process involves:

- A scoping exercise to identify and assess the potential impacts and risks more accurately in close cooperation with the executing agency;

<sup>122</sup> KfW Bank (2023); Sustainability Guideline Assessment and management of Environmental, Social, and Climate Aspects: Principles and Procedures.

- The design and implementation of an ESDD to examine all or individual aspects of the FC measure, including participatory approaches to involve people affected by the project and public disclosure in the partner country.

For projects rate “A”, it is mandatory to analyse and assess any environmental and social impacts in an independent Environmental and Social Impact Assessment (ESIA) which has to include an Environmental and Social Management Plan (ESMP). The latter has to describe all the measures that need to be taken to “avoid, mitigate, offset and monitor any adverse impacts and risks identified in the ESIA” and set out the responsibilities for implementing the plan. For FC measures run by private sector entities, the latter need to have their own Environmental and Social Management System.

For projects rated “B”, the requirements of an ESIA (i.e. its scope, priorities and depth) are determined on a case-by-case basis. However, for projects rated “B+”, an ESIA and as well as an ESMP adapted to the identified impact(s) and risk(s) are required.

Projects rated “C” do not require any additional assessment but should be monitored over their life cycle for any relevant changes.

Overall, an in-depth ESDD is required for FC-measures rate “A”, “B+” and “B” and the executing agency or the funding recipient is responsible for providing the relevant information for the assessment of environmental and social impacts.

This in-depth ESDD can take place as part of the study assessing the feasibility of the FC-measure. In the case of significant adverse impacts and risks further stand-alone studies and management plans are required. The executing agency, in consultation with KfW Development Bank, is responsible for the design and implementation of the studies as part of the preparation phase of the FC measure.

The measures stipulated in the ESMP are binding on the executing agency and their implementation is monitored by KfW Development Bank.

In the case of FC-measures involving the provision of funding to financial intermediaries for on-funding, the ESDD of the financial intermediaries will focus on the potential environmental and social impacts and risks of the planned funding area and the financial intermediaries’ procedures and capacity to assess environmental and social concerns and monitor loans in its portfolio. Moreover, in cases where KfW Development Bank owns shares of the financial intermediary, the ESDD covers the whole portfolio of the intermediary.

### 6.6.1.2 Publication

KfW Development Bank does not publish the ESIA, but it requires the project partner to publish the ESIA as well as a non-technical summary of all relevant environmental and social risks prior to the start of any project activity through their website and/or other channels depending on accessibility by affected people and stakeholders to the website. Public hearings are to be held locally during the scoping phase of the ESIA process and for the presentation of the ESIA report. The executing agency has to engage in a “meaningful” consultation process and is “required to disclose relevant information and a non-technical summary on the environmental and social assessment of the FC-measure via appropriate media channels at an accessible location and in a timely, culturally

appropriate manner. The whole process is to be comprehensive and implemented throughout all the phases of the FC measure”.<sup>123</sup>

Only limited project-specific environmental information is provided by the KfW Development Bank (environmental risk rating and brief description of the risk) on its website. The information is published after the signing of the project and is not updated over the life of the project.

### 6.6.2 The environmental assessment process of the DEG and publication of project-related information

This process is very similar to the one followed by the KfW Development Bank. DEG publishes only the risk rating of projects on its website. As in the case KfW Development Bank, the information is published after the signing of the project and is not updated over the life of the project.

### 6.6.1 The environmental assessment process of the KfW IPEX Bank and publication of project-related information

According to the Guideline of KfW IPEX-Bank GmbH for environmentally and socially sound financing of October 2020, all financing projects have to undergo an ESIA, the first step of which involves assigning an environmental and social risk rating to a potential project. The same scale of A, B and C risk rating scale.<sup>124</sup>

In the case of financings in Category A and Category B with occasional significant environmental and social impacts, KfW IPEX-Bank is assisted during its ESIA by an expert who is fully independent of the client. The expert’s role is to review and assess the client's environmental and social impact study, the resulting environmental and social management plan (or plans) and stakeholder engagement for the project and determine whether the procedures and results meet the requirements arising from Sustainability Guideline of KfW IPEX Bank.

In the case for projects in Category A and in Category B with occasional significant environmental and social impacts, the project sponsor has to publish an online summary of the environmental and social compatibility study.<sup>125</sup>



The BPF does not publish pro-actively project-related environmental information.

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<sup>123</sup> KfW Bank (2023); Sustainability Guideline Assessment and management of Environmental, Social, and Climate Aspects: Principles and Procedures.

<sup>124</sup> KfW IPEX Bank (2020); Guideline of KfW IPEX-Bank GmbH for environmentally and socially sound financing.

<sup>125</sup> Ibid.

## 7 Legal basis of the publication of environmental information by the WB, ADB and KfW group

### 7.1 World Bank

The World Bank is not legally bound to collect and disclose environmental information, as it is not subject to domestic environmental information regimes nor is it a party to the Aarhus Convention. However, the World Bank has implemented mandatory policies and principles that impose obligations to disclose environmental information both proactively and on request.<sup>126</sup> In this way, while the World Bank is not a party to the Convention, the organisation does seek to integrate the Convention's principles of transparency, public participation, and access to information in environmental and social matters into its operational policies. This reflects the Bank's recognition of the importance of engaging with affected communities, providing access to relevant information, and ensuring transparency in its development projects.

Before moving on to discuss the procedures enshrined within the World Bank's access to information policy, it is worth noting that the policy is explicitly framed in relation to accessing information, rather than environmental information. This is notable because the right to information, while engaging with a participatory approach as a desirable objective, is generally more understood as a means of promoting transparency and accountability within an organisation. The right to environmental information, on the other hand, has a greater degree of engagement with the participatory aims of giving the public access to environmental information. In this way, while the policy is framed as a general right to information regime, its objectives align more closely with those underlining the right of access to environmental information.

The procedures and policies adopted by the World Bank in relation to the disclosure of environmental information is broadly reflective of the obligations contained within the Aarhus Convention. The World Bank operates under a general presumption of disclosure,<sup>127</sup> similar to the Aarhus Convention, and does contain a list of exceptions which the Bank can apply to withhold information,<sup>128</sup> covering a similar range of matters as the exceptions contained within the Aarhus Convention. In responding to requests, the World Bank sets a 20 working day-time limit,<sup>129</sup> which is identical to the Aarhus Convention.

In the matter of proactive disclosure, the World Bank's policy goes beyond that of the Aarhus Convention by specifying specific documents which should be proactively disclosed.<sup>130</sup> This contrasts with the more general provisions of the Aarhus Convention, although it should be noted that the Convention cannot provide the same level of detail as the World Bank due to its nature as an international instrument. The World Bank also operates an explicit declassification procedure, which ensures that information cannot be withheld indefinitely without good reason. However,

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<sup>126</sup> See <https://www.worldbank.org/en/access-to-information> and the World Bank's Environmental and Social Framework – which also engages with the participatory elements of the Aarhus Convention - generally. More specific details can be seen in the Bank Policy: Access to Information (<https://ppfdocuments.azureedge.net/3693.pdf>) and Retired Bank Directive/Procedure: Access to Information Directive/Procedure (<https://ppfdocuments.azureedge.net/341292e1-0f33-4d46-8a50-0d207c937b79.pdf>).

<sup>127</sup> World Bank (2015); Bank Policy, page 10.

<sup>128</sup> World Bank (2015); Bank Policy, page 10-14, although the World Bank's exceptions are significantly more specific in detailing matters that should be withheld from disclosure, and Bank Directive/Procedure, page 23.

<sup>129</sup> World Bank (2015); Bank Directive, page 21.

<sup>130</sup> World Bank (2015); Bank Policy, page 15-18 and Bank Directive, page 11 and Annex 2.

while the Aarhus Convention does not contain such a procedure explicitly, the operation of the public interest test performs the same role as the Bank's declassification procedure.<sup>131</sup>

The World Bank also provides for the ability to charge "reasonable" fees.<sup>132</sup> This is similar to that of the ability of public authorities to charge a "reasonable amount" for the disclosure of environmental information under the Aarhus Convention, albeit without an obligation to publish a charge and fee waiver scheme.

However, a closer examination of the World Bank's Policy and Procedure documentation does reveal various divergences from the procedural obligations enshrined in the Aarhus Convention – which can be broadly categorised as a concentrated effort on the part of the World Bank to retain the discretion to withhold information from disclosure. While the World Bank does operate on a general presumption of disclosure, it can withhold non-exempt information from disclosure in "exceptional circumstances" if it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure.<sup>133</sup> While this power can only be exercised by certain Board Members in particular instances it is a significant divergence from the Aarhus Convention, which only allows for a public authority to withhold information if it falls within one of the listed exceptions. As such, it could be argued that the World Bank's information disclosure policy is significantly more permissive than the obligations enshrined in the Aarhus Convention.

The ability to prevent the disclosure of information is further emphasised by the fact that, in applying the exemptions to disclosure contained within the World Bank policy, the Bank does not need to consider whether it would be in the public interest to disclose the requested information.<sup>134</sup> This contrasts with the Aarhus Convention, where exemptions cannot be applied if the public interest in disclosing the information outweighs the potential harm that could be caused in disclosure. Consequently, the World Bank's Access to Information policy is significantly less likely to lead to the disclosure of requested information when compared to that of the Aarhus Convention.

A connected element of the World Bank's information policy is that the discretion to disclose information which could be exempted from disclosure is only exercisable where it is approved by the Board, third parties who gave the information in confidence, or the Access to Information Committee as appropriate.<sup>135</sup> This discretion only applied to corporate administrative information, deliberative information, and financial information, and can only be exercised where the benefits of disclosure outweigh the potential harms to interests protected by the relevant exceptions. This lies in contrast to the Aarhus Convention, where the discretionary power to disclose information is applicable across all exceptions<sup>136</sup> - in turn further reinforcing the position of the World Bank as adopting procedures which are less likely to result in the disclosure of information when compared to the Aarhus Convention.

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<sup>131</sup> This is because the longer a requested piece of information has been held by the public authority, the less likely disclosure of that information will harm any of the interests protected by the Aarhus Convention.

<sup>132</sup> World Bank (2023); Retired Bank Directive, page 22.

<sup>133</sup> World Bank (2015); Bank Policy, page 20.

<sup>134</sup> World Bank (2015); Bank Policy, page 19, although the Bank does have to consider the benefits of such disclosure and weigh it against the potential harm(s) to the protected interests.

<sup>135</sup> World Bank (2015); Bank Policy, page 19.

<sup>136</sup> Arguably, another point of divergence is that the Aarhus Convention does not require approval for this discretion to be utilised. However, in practice it is likely that internal approval within a public authority will be sought.

The content of the World Bank's exemptions to disclosure also merit scrutiny. While they do cover broadly similar areas as those in the Aarhus Convention, the specifics of those exemptions indicate a certain degree of divergence from the normative standards of the Aarhus Convention. For example, in allowing the World Bank to refuse unreasonable or unsupported requests – similar to the “manifestly unreasonable” exception in the Aarhus Convention – that Bank's policy explicitly allows for the exemption to be applied to “excessively burdensome” requests or requests that require the Bank to generate new information or documents. While the Aarhus Convention also allows for public authorities to refuse to process requests for environmental information on these grounds, the Aarhus Convention Implementation Guide make it clear that authorities need to allow the requester the opportunity to refine their requests.<sup>137</sup> This additional step is not set out in the World Bank Policy, making it unclear whether the Bank will seek further clarification or not.

Various procedural elements also depart from the normative standards of the Aarhus Convention. For example, while both the World Bank and the Aarhus Convention share the 20 working day time limit, the Aarhus Convention also states that information should be disclosed as soon as possible – an element omitted from the World Bank's policy document. Perhaps more significantly, the World Bank policy on access to information explicitly rules out the requirement to redact documents when disclosing information on requests.<sup>138</sup> This is a significant issue, because documents which contain both disclosable and non-disclosable information are considered to be non-disclosable under the policy; which in turn reduces the likelihood of disclosable information being disclosed if it is also on the same document has information which cannot be disclosed.<sup>139</sup> The Aarhus Convention adopts the opposite approach: imposing a duty on public authorities to separate exempt and non-exempt information from disclosure in order to disclose as much information as possible.<sup>140</sup> In this way, the World Bank's policy is less effective at promoting the disclosure of environmental information on request than the Aarhus Convention.

A final point to discuss is the existence of appeal procedures within the World Bank's Access to Information policy. Where a requester wishes to challenge a decision to withhold information from disclosure by the World Bank, they can appeal to the Bank's Access to Information Committee.<sup>141</sup> This internal review body acts the first stage of appeal; if the requester is dissatisfied with the decision of the Access to Information Committee, they can then appeal to the independent external Appeals Board.<sup>142</sup> The existence of an appeal mechanism does generally comply with the Access to Justice provisions contained within Article 9 of the Aarhus Convention.

However, it is worth noting that in relation to questions regarding the discretion of the World Bank to override a policy exemption and disclose the requested information the decision of the Access to Information Committee is final- there is no further appeal to the external Appeals Board.<sup>143</sup> As the majority of contentions relate to the use of exemptions to withhold environmental information from disclosure, it could be argued that this would constitute the majority of challenges. In practice then,

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<sup>137</sup> J Ebbesson, H Gaugitsch, J Jendroška, F Marshall and S Stec, *The Aarhus Convention: An Implementation Guide* (2<sup>nd</sup> edn, United Nations, 2014), page 84. This is also reinforced by Article 3(2) of the Aarhus Convention itself, which obliges public authorities to assist and provide guidance to individuals seeking to utilise their Convention rights.

<sup>138</sup> World Bank (2023) Retired Bank Directive, page 22.

<sup>139</sup> This is explicitly set out in the Retired Bank Directive, although the Directive also states that the World Bank may use its discretion to modify or redact documents so that they are suitable for disclosure.

<sup>140</sup> Aarhus Convention, article 4(6).

<sup>141</sup> World Bank (2010); Access to Information Bank Policy, page 18.

<sup>142</sup> World Bank (2015); Bank Policy, page 19 and World Bank (2023); Retired Bank Directive, 26.

<sup>143</sup> Ibid.

this may mean that for the majority of requesters the internal Access to Information Committee is the sole means of appeal for them to challenge decisions to withhold information. Such an approach is in breach of the Aarhus Convention, as Article 9 necessitates an independent method of challenging such decisions.<sup>144</sup>

Overall, it can be said that while the World Bank's policy on access to information does contain various parallels to the procedures contained in the Aarhus Convention, many details (particularly the use of exemptions to the right to information) contained within the policy depart from the principles of transparency and information disclosure that underpin the Convention.

### 7.2 Asian Development Bank

Similar to the World Bank, the Asian Development Bank (ADB) is not legally bound to collect and disclose environmental information as a matter of national or international law. Yet despite this, the ADB has also implemented mandatory policies and principles that impose obligations to disclose environmental information both proactively and on request.<sup>145</sup> Underpinned by the ADB's "commitment to transparency, accountability, and participation by stakeholders [affected communities] in ADB-supported development activities in Asia and the Pacific",<sup>146</sup> the ADB's policy mirrors the driving principles of the Aarhus Convention in the same way as the World Bank's information policy.

To a large extent, the access to information policies of the ADB are identical to that of the World Bank: they are each underpinned by a presumption of disclosure;<sup>147</sup> they each have an extensive list of information that they will proactively disclose;<sup>148</sup> they each contain the same categories of exemptions enabling them to withhold information, including the ability to withhold information that does not fall within one of the listed exemptions upon approval by the Board of Directors;<sup>149</sup> and they have each adopted the same structure of appeal for individuals seeking access to information held by the ADB.<sup>150</sup> In this way, much of the analysis made in relation to the World Bank will also apply to the ADB's information policies – leading to the same conclusion that ADB's Access to Information Policy is less effective at promoting the disclosure of environmental information on request than the provisions of the Aarhus Convention.

There are a few points of difference between the ADB and the World Bank. However, the most significant of these is the time limit imposed by the ADB's information policy it to respond to requests for information. The ADB's information policy states that any disclosure must be "timely" and within the 30-day time limit. This differs from the World Bank, which imposed a shorter time limit of 20 days but does not impose a general obligation of timeliness. While this general timeliness obligation is positive in incentivising the ADB to respond to requests as quickly as possible, the longer

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<sup>144</sup> Aarhus Convention, Article 9(1).

<sup>145</sup> These policies include the Access to Information policy (<https://www.adb.org/sites/default/files/institutional-document/450636/access-information-policy.pdf>) and the Access to Information Policy Operations Manual (<https://www.adb.org/sites/default/files/institutional-document/31483/om-i3.pdf>).

<sup>146</sup> ADB (2018); Access to Information Policy, page 5.

<sup>147</sup> ADB (2018); Access to Information Policy, page 5.

<sup>148</sup> ADB (2018) Access to Information Policy, page 6 and ADB (2023); Access to Information Policy operations Manual, pages 14-35.

<sup>149</sup> ADB (2018); Access to Information Policy, pages 8-11 and ADB (2023) Access to Information Policy operations Manual, pages 3 – 5.

<sup>150</sup> ADB (2018); Access to Information Policy, page 12.

period of time given to respond to requests can result in a longer period before disclosure takes place.

The significance of the similarities between the ADB and the World Bank's policies on how the guarantees access to environmental information is worth explicitly highlighting. Beyond similarities in the structure and content of each policy, the wording adopted in the ADB's policy is often identical to that of the World Bank. This, in conjunction with the similar differences between these policies and the Aarhus Convention, suggests that development banks are looking towards each other to design the specific procedural obligations of their respective information policies, rather than the more onerous procedural obligations imposed in the Aarhus Convention.<sup>151</sup> This is not to suggest that the Aarhus Convention has had no influence – some aspects of these policies do align with those within the Convention, and the broad objectives of transparency and accountability are adopted from the broader discussion generated by the success of the Aarhus Convention – but rather the influence of the Convention is perhaps more limited than may be expected considering its normative status.

### 7.3 KfW Development Bank

According to the German Government, KfW is a “governmental implementing organisation”.<sup>152</sup> As such, it is likely to meet the definition of “public authority” as defined by the Aarhus Convention and the Court of Justice of the European Union in the *Fish Legal* case.<sup>153</sup> KfW Development Bank does not, seem, as far as can be identified by the authors, have an Access to Information Policy that allows the public to submit requests for environmental information. As a result, if a request is submitted to KfW it can be processed – or ignored – as the recipient of that requests decides. This is problematic, as members of the public are denied the ability to request environmental information directly from KfW.

This is not to suggest that KfW Development Bank are not making efforts to improve the transparency of the organisation. A key component of KfW's efforts in this regard can be seen in their Transparency Portal,<sup>154</sup> which provides a range of information on the various projects funded by KfW.

Sustainability reports also provide insight into the operation of KfW and its environmental impacts.<sup>155</sup> However, it should be noted that proactively disclosed environmental information is only one element of the right of access to environmental information. The right to directly request the disclosure of environmental information services a different set of needs to the right to have environmental information proactively disclosed,<sup>156</sup> and to deny this service to the public does hinder their ability to scrutinise and hold KfW to account in environmental matters.

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<sup>151</sup> Indeed, the ADB policy notes that their policy is in line with peer institutions (Access to Information Policy, page 2).

<sup>152</sup> <https://www.bmz.de/en/ministry/facts-figures/project-and-organisation-data>.

<sup>153</sup> Case C-279/12, *Fish Legal v Information Commissioner*, ECLI:EU:C:2013:853 – specifically, as a “governmental implementing organisation”, KfW Development Bank is likely to either have been granted special powers beyond those granted by the normal operation of private law (para 56) or that a public authority exerts a “decisive influence” on the actions of KfW Development Bank (para 68).

<sup>154</sup> <https://www.kfw.de/microsites/Microsite/transparenz.kfw.de/#/start>.

<sup>155</sup> For example, <https://www.kfw.de/microsites/Microsite/nachhaltigkeitsbericht.kfw.de/en/data/>.

<sup>156</sup> S Whittaker, J Mendel and C.T Reid, “Back to Square One: Revisiting How We Analyse the Right of Access to Environmental Information” (2019) 31(3) *Journal of Environmental Law* 465, 471.

In relation to the influence of the Aarhus Convention on the information policies of KfW Development Bank, it is clear that the provisions of the Convention have not influenced the content of, nor led to the creation of, an Access to Information policy that allows for the public to request the disclosure of environmental information. Yet it should be noted that the principles of, and perceived benefits of, transparency have clearly influenced the drive of KfW to proactively disclose environmental information. If this was not the case, it is likely that KfW would not have implemented its Transparency Portal to proactively disclose information on the various projects it funds. Thus, while the Convention may not have influenced how it discloses environmental information, the broader discussions around the accessibility of environmental information has had an impact on the governance of KfW.

### **7.4 Banco Português de Fomento**

According to BPF officials, as of early May 2024, BPF is still in the process of assessing the applicability of the Aarhus Convention to the bank. Depending on the outcome of this applicability assessment, project-related environmental information may be published at a later stage,

## 8 Form in which the project-related information is made available and continuous monitoring

### 8.1 World Bank

The World Bank's official disclosure mechanism is their Documents and Reports (D&R) site.<sup>157</sup> In accordance with the Bank's Access to Information policy, the repository contains official documents and reports which are available to the public.

Official documents published on the D&R site includes project documents such as those discussed in section 6.2, for example, the Environmental and Social Summary and the Environmental and Social Risk Assessment. Other types of documents published on this site include board documents, in-depth economic background studies, country focus documents (outlining strategic priorities and directions for lending activities) and other research papers. The main format in which project documents are provided in is a PDF report.

Project information documents are posted online during conceptualisation and are regularly updated, remaining available throughout the project cycle. Environmental assessment documents specific to projects are also posted as soon as possible and updated when necessary. Early drafts of reports are also posted during the consultation process.

The World Bank also has a publicly accessible Excel-based database of the basic information on all of the World Bank's lending operations.<sup>158</sup> The dataset includes basic information such as project title, Borrower country, sector, and lending instrument. The database also includes the environmental and social risk rating (i.e. high, substantial, moderate or low); however this data is largely incomplete. Out of the 2,286 projects approved after 2018 on the database, the environmental and social risk rating is provided for 1,150 of them (50.3%). This does not mean the information is not available elsewhere (i.e. on pdf project documents).

### 8.2 Asian Development Bank

The ADB's SPS extends its focus beyond timeliness and also addresses the form in which information is presented. The primary channel for disclosure is the ADB's website. As the ADB advised during consultation, achieving meaningful consultation necessitates consideration of both timeliness and form. It is crucial for the information to be understandable and respectful of cultural heritage. This is accomplished through having documents translated, bringing in interpreters, and working with Multinational Government Organisations (MGOs) and Civil Society Organisations (CSOs), or consultants to convey the content in non-technical language. The disclosure of information on the ADB's website is primarily intended for international agencies and interested parties.

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<sup>157</sup> World Bank (2023) [World Bank Documents and Reports](#).

<sup>158</sup> World Bank (2023) [World Bank Project and Operations](#).

The Asian Development Bank's official disclosure channel for project information is through their 'Projects & Tenders' section of their website. Each project follows a standardised layout with the following components:

- **Overview:** a short summary of the project, accompanied by links to the most recent project documents.
- **Project Data Sheet:** includes basic information such as project name, project number, country, project type, project agendas, as well as the environmental and social risk classifications.
- **Documents:** direct links to the available documents associated with the project.

Documents that are associated with the project are provided in PDF format.

### 8.3 KfW

The project-related environmental information is published with the short descriptions of the various projects on an interactive page of the websites of KfW Development Bank and DEG. Examples of information provided by each of the two institutions are provided below. As already noted, the KfW Development Bank provides much more details about the environmental and social risks and mitigation measures than the DEG which simply provides the risk rating.

#### **Example of KfW Development Bank - Project: IWRM Coastal Protection Program III – Grant**

"The aim of the project is to increase the adaptability of the Tunisian coastal landscape to climate change. .... According to the KfW sustainability guidelines, it is classified in environmental and social compatibility category B (moderate environmental and social risks). An in-depth environmental and social impact study for the project was carried out. Identified potential risks of the project include the areas of environment (noise, emissions, impairment of maritime fauna and flora, changes in hydrodynamic and sedimentary processes), neighbouring areas (temporary loss of quality of life in the immediate vicinity of the construction sites, risk of traffic accidents in the construction site area, impairment caused by construction site waste in solid and liquid form) as well as working conditions and safety. These risks are limited to the duration of the work. Measures to manage risks and impacts have been developed and recorded in appropriate management plans. The responsibility for implementation as well as for stakeholder engagement and the creation and implementation of a project-specific complaint mechanism lies with the project sponsor."<sup>159</sup>

#### **Example of DEG – Project: Naked Financial Technology Pty Ltd.**

"The funds will be used to support Naked's growth strategy and idea becoming a full licensed digital insurance company.....Environmental & Social Category B".

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<sup>159</sup> English translation of German-language notice available at <https://www.kfw-entwicklungsbank.de/ipfz/Projektdatenbank/IWRM-K%C3%BCstenschutzprogramm-III---Zuschuss-58118.htm>.

## 9 What are the possibilities for project promoters, or of other partners of the financing entities, to prevent or delay the publication of 'environmental information'?

### 9.1 World Bank

The World Bank's Access to Information Policy incorporates several exceptions to disclosure of information. The Policy explicitly sets out 10 categories of information that are considered to be exceptions and not eligible for declassification (see Box below).

According to the WB, its Policy reflects a balance between the Bank's commitment to transparency to the public and its obligations to protect the confidentiality of information pertaining to shareholders, clients, staff and other parties, and to protect its deliberative process. The information on the list of exceptions is restricted because disclosure could cause harm to well defined interests.

#### Box 7 WB's list of exceptions from disclosure

- Personal information: including personal staff records, medical information and personal communications.
- Communications with and between individual Governors and/or Executive Directors' offices.
- The proceedings of Ethics Committee for Board Officials.
- Information that is subject to attorney-client privilege.
- Information that would compromise the security and safety of individuals.
- Information that is restricted under separate disclosure regimes and other investigative information, such as the Access to Information Policy for the Independent Evaluation Group.
- Information provided by member countries or third parties that was provided on the understanding of confidentiality.
- Information related to the Bank's corporate administrative matters (e.g. corporate expenses, procurement and real estate).
- Deliberative information such as emails, notes, memoranda, draft reports or other documents that inform the Bank's internal decision-making processes.
- Financial Information such as estimates of future borrowing of the IBRD, contributions by individual donors to IDA as well as banking or billing information of World Bank Group entities, member countries, clients, donors, recipients, or vendors, including consultants.

## 9.2 Asian Development Bank

While one of ADB's main principles of its Access to Information Policy is presumption of disclosure, exceptions are made based on the ADB's determination that disclosure of information would cause harm to specific parties or interests that would outweigh the benefits. The ADB employs a harm-benefit assessment to weigh the likely harms caused by disclosure against the benefits.

The categories of information that would not be disclosed are very similar to those listed in Box 7. For example, the list includes information in the ADB's decision making process, information provided in confidence, personal information, financial information and information on security and safety.

In terms of private sector transactions, clients may make a case for non-disclosure if they feel that the disclosure of certain information would impact their competitiveness. For example, a private sector client may have concerns related to intellectual property issues.

However, while clients can make a case for non-disclosure, the prerogative ultimately lies with the ADB. The ADB operates with a positive and negative override.<sup>160</sup> That is, the ADB has a right to disclose information that falls under the exceptions if they determine that the benefit to the public outweighs the harm in disclosing (positive override). The ADB also has the right to not disclose information that they would normally if they determine that the harm would outweigh the public benefit.

## 9.3 KfW

The legal grounds for refusals to disclose environmental information are listed in the Umweltinformationsgesetz transposing the respective EU transposition of the Aarhus Convention. These grounds for refusals relate to requests for access of environmental information (see Annex 8 for complete list of legal reasons for refusing to provide requested environmental information). Private grounds for refusals relate to the protection of personal data or business secrets.

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<sup>160</sup> ADB (2018); ['Access to Information Policy'](#).

## 10 Do those financing entities ensure that 'environmental information' is actively published for projects they finance (wholly or through co-financing) through intermediaries?

### 10.1 World Bank

One of the World Bank's Environmental and Social Standards as part of their Environmental and Social Framework relates specifically to the requirements for financial intermediaries (FI). Financial intermediaries include both public and private financial services providers, including national and regional development banks.

The requirements of this ESS apply to all FIs that receive support from the Bank, either directly from the Bank or the Borrower, or through the Borrower or other FIs, as follows: (a) Where Bank support is provided to the FI to fund clearly defined FI subprojects, the requirements of this ESS will apply to each of the FI subprojects; and (b) Where Bank support is provided to the FI for a general purpose,<sup>3</sup> the requirements of this ESS will apply to the entire portfolio of the FI's future subprojects from the date on which the legal agreement becomes effective.<sup>161</sup>

Financial intermediaries are required to develop and maintain an Environmental and Social Management Systems (ESMS). The ESMS has to align with the nature and extent of the environmental and social risks and impacts associated with FI subprojects, the types of financing, and the overall risk at the portfolio level.<sup>162,163</sup>

The required ESMS for FI's encompasses the following components:

- An environmental and social policy;
- Clearly defined procedures for identifying, assessing and managing environmental and social risks and impact of subprojects;
- Organisational capacity and competency;
- Monitoring and review mechanisms for environmental and social risks of subprojects and the overall portfolio;
- An external communication mechanism.

Where FI subprojects are likely to have minimal or no adverse environmental or social risks or impacts, the FI has to assess the compliance of subprojects with applicable national laws.

Under the Environmental and Social Framework (ESF), financial intermediaries must ensure transparency regarding their ESMS. This involves disclosing, if applicable, a summary of each component of the ESMS on their own website, if such website exists. Additionally, they should provide written permission for the Bank to publish this information on the Bank's website.<sup>164</sup>

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<sup>161</sup> The World Bank (2018); ['Environmental and Social Framework for IPF Operations. ESS9: Financial Intermediaries'](#).

<sup>162</sup> 'Subproject' in this context refers to projects that are financed by financial intermediaries with support from the World Bank.

<sup>163</sup> The World Bank (2018); ['Environmental and Social Framework for IPF Operations. ESS9: Financial Intermediaries'](#).

<sup>164</sup> The World Bank (2018); ['Environmental and Social Framework for IPF Operations. ESS9: Financial Intermediaries'](#).

Additionally, the FI is required to ensure that any sub-borrowers disclose any project-related documents that are either mandated by the application of the WB's Environmental and Social Standards (ESSs), or for any FI subprojects that are categorised as high risk according to the FI's own system.<sup>165</sup> Sub-borrowers are also obliged to disclose any environmental and social monitoring reports.

## **10.2 Asian Development Bank**

According to the ADB's Safeguard Policy Statement (SPS), the ADB manages a growing portfolio of projects with FIs, particularly in the private sector.<sup>166</sup> All FIs will ensure that their investments are in compliance with applicable national laws. The ADB also conducts safeguard due diligence to assess potential environmental and social impacts associated with an FI's existing and likely future portfolio as well as its commitment and capacity for environmental and social risk management.<sup>167</sup>

Where the FI's investments have minimal or no adverse environmental or social risks, the FI project will be categorised as a Category C project (see Annex 6) and will not need to apply any other specific requirements. In cases where the FI's portfolio signals a potential for significant environmental or social impacts, FIs must establish an Environmental and Social Management System (ESMS) in line with the nature and risks of the FI's anticipated portfolio. This ESMS, integrated into the FI's overall management system, must include<sup>168</sup>:

- Environmental and social policies;
- A screening, categorization, and review procedure;
- Organisational structure and staffing, including skills and competencies in environmental and social areas;
- Training requirements;
- Monitoring and reporting.

The FI is mandated to ensure that these subprojects meet the ADB's requirements specified in the SPS, including information disclosure and consultation.<sup>169</sup> Where subprojects are identified by the FI to have potentially significant environmental or social risks, the FI must promptly refer them to the ADB. The ADB will then actively assist in appraising these subprojects, reviewing due diligence information, determining additional needs and mitigation conditions for approval. If approved, the ADB will monitor the FI's performance on the basis of its environment and social management system. The FI will prepare and submit periodic reports at least annually on the implementation status of its ESMS.

Subprojects that have potentially significant environmental or social risks will be treated as Category A or B (depending on the level of risk). The disclosure requirements that apply to Category A and B

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<sup>165</sup> The World Bank (2018); ['Environmental and Social Framework for IPF Operations. ESS9: Financial Intermediaries'](#).

<sup>166</sup> Asian Development Bank (2009); ['Safeguard Policy Statement'](#).

<sup>167</sup> Asian Development Bank (2009); ['Safeguard Policy Statement'](#).

<sup>168</sup> Asian Development Bank (2009); ['Safeguard Policy Statement'](#).

<sup>169</sup> Asian Development Bank (2009); ['Safeguard Policy Statement'](#).

## 10 | Do those financing entities ensure that 'environmental information' is actively published for projects they finance (wholly or through co-financing) through intermediaries?

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projects financed wholly by the ADB also apply to the FI and the sub-project. For example, the annual report that the FI submits to the ADB will be published on the ADB's website.

### 10.3 KfW

In the case of KfW Development Bank projects involving the provision of funding to financial intermediaries for on-funding, the ESDD of the financial intermediaries will focus on the potential environmental and social impacts and risks of the planned funding area and the financial intermediaries' procedures and capacity to assess environmental and social concerns and monitor loans in its portfolio. Moreover, in cases where KfW Development Bank owns shares of the financial intermediary, the ESDD covers the whole portfolio of the intermediary.

A broadly similar approach is followed by the DEG.

## 11 Planned changes to the financing entities' current 'environmental information' publication practices

### 11.1 World Bank

There are no indications that the World Bank is set to change their publication practices regarding environmental information in the near future. The World Bank's Access to Information Policy was implemented in 2010, with the only updates being slight modifications to clarify the declassification of Board of Governors records.<sup>170</sup>

The Environmental and Social Framework was approved in 2016 and became effective in October 2018. It replaced the 'Environmental and Social Safeguards' policy which was in operation for 20 years prior. In terms of the environmental information collected, the ESF highlighted additional environmental issues, for example requiring the estimation of the project impacts on greenhouse gas emissions, the sustainable management of living natural resources and water management.<sup>171</sup>

### 11.2 Asian Development Bank

According to ADB officials, the ADB is currently in the process of updating its Safeguard Policy Statement (SPS) which has been in operation since 2009. This initiative stems from an independent evaluation, conducted by the department responsible for assessing the ADB's effectiveness in key projects. The report identified a need to update and modernise the policy. The evaluation findings prompted the decision from the ADB to bring the SPS in line with the environmental and social policies of other institutions such as the World Bank and International Financing Corporation (IFC).

The forthcoming policy will be known as the Environmental and Social Framework (ESF) and will comprise four parts: (i) the Vision, (ii) the Environmental and Social Policy, (iii) ten Environmental and Social Standards (ESSs) and (iv) a prohibited investment activities list.<sup>172</sup> The 'Vision' will set out the ADB's aspirations regarding the environmental and social sustainability. The Environmental and Social Policy will set out the ADB's mandatory environmental and social requirements in relation to the projects it finances. The Environmental and Social Policy for the ADB will mirror the World Bank's Environmental and Social Policy for Investment Project Financing. The ESSs are the standards that borrowers are required to meet. These closely mirror the World Bank's ESSs, with minor variations in wording. Notably, the ADB includes a standard on climate change, which the World Bank does not, while the World Bank has a standard on financial intermediaries, which the ADB does not.

The ADB noted that a key motivation was to align with the standards adopted by the IFC, which implemented the framework of ten environmental and social standards for borrowers in 2012. The World Bank and the European Investment Bank followed suit in 2018. The World Bank, like the ADB, transitioned from operational policies to embrace an Environmental and Social Framework.

The ADB's Draft Environmental and Social Framework has received board approval and the ADB is now moving into the consultation phase. Formal board approval of the final ESF is expected by the

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<sup>170</sup> World Bank (2015) [Access to Information: Timeline](#).

<sup>171</sup> World Bank (2019) [Environmental and Social Framework factsheet](#).

<sup>172</sup> Asian Development Bank (2023) [Draft Environmental and Social Framework](#).

end of Q2 2024. Following approval, there will be a one-year period dedicated to piloting and implementation.

### **11.3 KfW**

According to KfW officials, there are no precise plans for changing the KfW organisations' approach to the publication of project-related environmental information.

### **11.4 BPF**

As already noted, as of early May 2024, the BPF is still in the process of assessing whether it is subject to the Aarhus Convention. The Bank plans to publish general sustainability information in June 2024 and, depending on the outcome of assessment of the applicability of the Aarhus Convention to the bank, project-related environmental information may be published a later stage.

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**ANNEXES**

## **Annex 1 Article 5 of Aarhus Convention – Collection and Dissemination of Environmental Information**

1. Each Party shall ensure that:

(a) Public authorities possess and update environmental information which is relevant to their functions;

(b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;

(c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:

(a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;

(b) Establishing and maintaining practical arrangements, such as:

(i) Publicly accessible lists, registers or files;

(ii) Requiring officials to support the public in seeking access to information under this Convention; and

(iii) The identification of points of contact; and

(c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b) (i) above free of charge.

3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks. Information accessible in this form should include:

(a) Reports on the state of the environment, as referred to in paragraph 4 below;

(b) Texts of legislation on or relating to the environment;

(c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and

(d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention, provided that such information is already available in electronic form.

4. Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.

5. Each Party shall take measures within the framework of its legislation for the purpose of disseminating, inter alia:

(a) Legislation and policy documents such as documents on strategies, policies, programmes and action plans relating to the environment, and progress reports on their implementation, prepared at various levels of government;

(b) International treaties, conventions and agreements on environmental issues; and

(c) Other significant international documents on environmental issues, as appropriate.

6. Each Party shall encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products, where appropriate within the framework of voluntary eco-labelling or eco-auditing schemes or by other means.

7. Each Party shall:

(a) Publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals;

(b) Publish, or otherwise make accessible, available explanatory material on its dealings with the public in matters falling within the scope of this Convention; and

(c) Provide in an appropriate form information on the performance of public functions or the provision of public services relating to the environment by government at all levels.

8. Each Party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices.

9. Each Party shall take steps to establish progressively, taking into account international processes where appropriate, a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and offsite treatment and disposal sites.

10. Nothing in this article may prejudice the right of Parties to refuse to disclose certain environmental information in accordance with article 4, paragraphs 3 and 4.

## Annex 2 Article 4 of REGULATION (EC) No 1367/2006

Article 4 of 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

### Collection and dissemination of environmental information

1. Community institutions and bodies shall organise the environmental information which is relevant to their functions and which is held by them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology in accordance with Articles 11(1) and (2), and 12 of Regulation (EC) No 1049/2001. They shall make this environmental information progressively available in electronic databases that are easily accessible to the public through public telecommunication networks. To that end, they shall place the environmental information that they hold on databases and equip these with search aids and other forms of software designed to assist the public in locating the information they require.

The information made available by means of computer telecommunication and/or electronic technology need not include information collected before the entry into force of this Regulation unless it is already available in electronic form. Community institutions and bodies shall as far as possible indicate where information collected before entry into force of this Regulation which is not available in electronic form is located.

Community institutions and bodies shall make all reasonable efforts to maintain environmental information held by them in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means.

2. The environmental information to be made available and disseminated shall be updated as appropriate. In addition to the documents listed in Article 12(2) and (3) and in Article 13(1) and (2) of Regulation (EC) No 1049/2001, the databases or registers shall include the following:

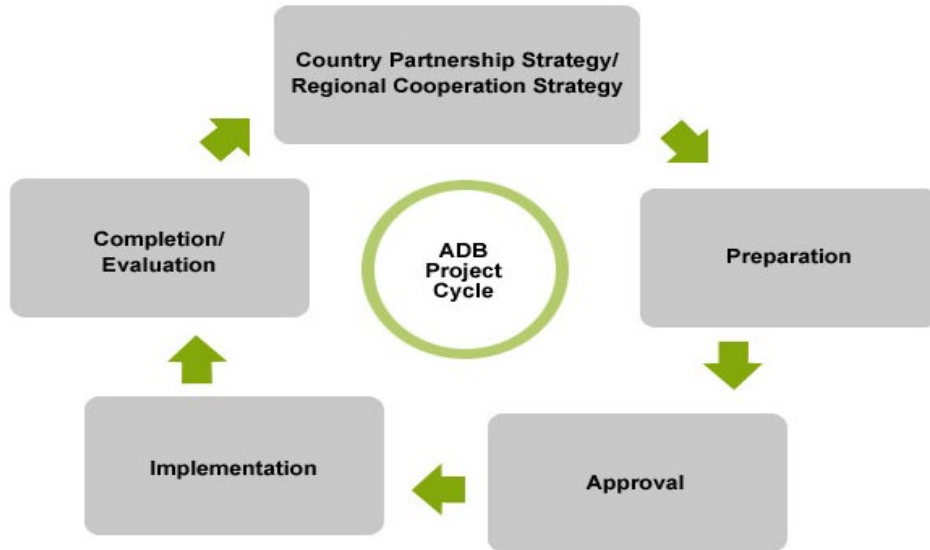
- (a) texts of international treaties, conventions or agreements, and of Community legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;
- (b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by Community institutions or bodies;
- (c) steps taken in proceedings for infringements of Community law from the stage of the reasoned opinion pursuant to Article 226(1) of the Treaty;
- (d) reports on the state of the environment as referred to in paragraph 4;
- (e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
- (f) authorisations with a significant impact on the environment, and environmental agreements, or a reference to the place where such information can be requested or accessed;
- (g) environmental impact studies and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed.

3. In appropriate cases, Community institutions and bodies may satisfy the requirements of paragraphs 1 and 2 by creating links to Internet sites where the information can be found.

4. The Commission shall ensure that, at regular intervals not exceeding four years, a report on the state of the environment, including information on the quality of, and pressures on, the environment is published and disseminated.

## Annex 3 Typical project cycle at the ADB and WB

Figure 5 ADB project cycle



Source: Asian Development Bank

Figure 6 WB project cycle



Source: World Bank (World Bank Project Cycle)

## Annex 4 The WB Environmental and Social Standards

The ten standards address the following topics:

- Environmental and Social Standard 1: Assessment and Management of Environmental and Social Risks and Impacts;
- Environmental and Social Standard 2: Labor and Working Conditions;
- Environmental and Social Standard 3: Resource Efficiency and Pollution Prevention and Management;
- Environmental and Social Standard 4: Community Health and Safety;
- Environmental and Social Standard 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement;
- Environmental and Social Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources;
- Environmental and Social Standard 7: Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities;
- Environmental and Social Standard 8: Cultural Heritage;
- Environmental and Social Standard 9: Financial Intermediaries;
- Environmental and Social Standard 10: Stakeholder Engagement and Information Disclosure.

## Annex 5 Example of ADB Rapid Environmental Assessment checklist

**Figure 7 Sample of a Rapid Environmental Assessment Checklist as required by the ADB**

### Appendix 2: Rapid Environmental Assessment Checklists

**Instructions:**

(i) The project team completes this checklist to support the environmental classification of a project. It is to be attached to the environmental categorization form and submitted to the Safeguards Division (SDSS), for endorsement by Director, SDSS and for approval by the Chief Compliance Officer.

(ii) This checklist focuses on environmental issues and concerns. To ensure that social dimensions are adequately considered, refer also to ADB's: (a) checklists on involuntary resettlement and Indigenous Peoples; (b) poverty reduction handbook; (c) staff guide to consultation and participation; and (d) gender checklists.

(iii) Answer the questions assuming the "without mitigation" case. The purpose is to identify potential impacts. Use the "remarks" section to discuss any anticipated mitigation measures.

Country/Project Title:

Sector Division:

Screening Questions	Ye s	No	Remarks
<b>A. Project Siting</b> Is the Project area adjacent to or within any of the following environmentally sensitive areas?			
▪ Cultural heritage site			
▪ Legally protected Area (core zone or buffer zone)			
▪ Wetland			
▪ Mangrove			
▪ Estuarine			
▪ Special area for protecting biodiversity.			
<b>B. Potential Environmental Impacts</b> Will the Project cause...			
▪ impairment of historical/cultural areas; disfiguration of landscape or potential loss/damage to physical cultural resources?			
▪ disturbance to precious ecology (e.g., sensitive or protected areas)?			

Source: [Project Documents | Asian Development Bank \(adb.org\)](http://Project Documents | Asian Development Bank (adb.org))

## Annex 6 ADB project risk typology

### Box 8 Environmental risk categories used by the ADB

“Projects are classified into one of the following environmental categories:

**Category A:** The project is likely to have significant adverse environmental impacts that are irreversible, diverse, or unprecedented. Impacts may affect an area larger than the sites or facilities subject to physical works. A full-scale environmental impact assessment (EIA), including an environmental management plan (EMP), has to be prepared by the borrower/client.

**Category B:** The project’s potential environmental impacts are less adverse and fewer in number than those in category A. Impacts are site-specific, few of which, if any, are irreversible. Impacts can be readily addressed through mitigation measures. An initial environmental examination (IEE), including an EMP, has to be prepared by the borrower/client.

**Category C:** The project is likely to have minimal or no adverse environmental impacts. An EIA or IEE is not required, but ADB will conduct a desk review of the project’s environmental implications.

**Category FI:** A Project is categorized as “FI” if it involves investment of ADB funds to or through a FI (Financial Intermediary). The objectives of these policy requirements, as stated by the ADB, are to “ensure the environmental soundness and sustainability of Projects, and to support the integration of environmental considerations into the Project decision-making process.” The requirements apply to all ADB-financed, assisted and/or ADB-administered sovereign and non-sovereign Projects.”

## Annex 7 Environmental risk rating of the KfW Development Bank

The following risk ratings are used by the KfW Development Bank:

- “A” = high risk
- “B+” = substantial risk
- “B” = moderate risk
- “C” low risk.

According to the Bank’s guidelines, a potential project is given a risk rating of “A” if “it risks having diverse significant adverse impacts and risks on the environment or the social conditions of the affected population. Such impacts and risks may derive from the complex nature of the FC-measure, its scale (large to very large), the sensitivity of the location(s) of the FC-measure or from the potential impacts and risks being irreversible or unprecedented. Such impacts and risks may affect a larger area that is beyond the site of the facility under construction, the facility itself as well as any associated facilities or just the FC-measure area in a narrower sense.

A potential project attracts a risk of “B” if “it potentially risks having adverse impacts and risks on the environment or the social conditions of those concerned, However, the impacts and risks tend to be less significant than those of Category A FC-measures and can usually be mitigated through standard, best available mitigation approaches. Typically, the potential impacts and risks of Category B FC-measures are limited to a local area, are in most cases reversible and easier to mitigate through appropriate measures.”

A rating of “B+” is given to a potential project if “it has a single significantly adverse environmental and social impacts or risks.”

Finally, potential projects which are expected to have no or only minor adverse environmental and social impacts or risks, and whose implementation and operation do not require any particular protection, compensation or monitoring measures are given a rating of “C”.

## Annex 8      Legal reasons for refusing to provide requested environmental information under German Umweltinformationsgesetz (UIG)

### Unofficial translation

#### **§ 8 Protection of public interests**

1) To the extent that disclosing the information would have adverse effects on

1. international relations, defence or important public security assets,
2. the confidentiality of the consultations of bodies required to provide information within the meaning of Section 2 Paragraph 1,
3. the conduct of ongoing legal proceedings, a person's right to a fair trial, or the conduct of a criminal, misdemeanour or disciplinary investigation, or
4. the condition of the environment and its components within the meaning of Section 2 Paragraph 3 Number 1 or protected assets within the meaning of Section 2 Paragraph 3 Number 6,

the application must be rejected unless the public interest in the announcement outweighs it. Access to environmental information on emissions cannot be refused on the grounds set out in points 2 and 4.

(2) As far as an application

1. was obviously abusive,
2. refers to internal communications from the bodies required to provide information within the meaning of Section 2 Paragraph 1,
3. is submitted to a body that does not have the environmental information, unless it can be forwarded in accordance with Section 4 Paragraph 3,
4. relates to the provision of access to material that is currently being completed, documents that have not yet been completed or data that has not yet been prepared or
5. is too vague and is not specified within a reasonable period of time at the request of the body required to provide information in accordance with Section 4 Paragraph 2, it must be rejected unless the public interest in the announcement outweighs it.

#### **§ 9 Protection of other interests**

(1) If

1. disclosing the information would reveal personal data and thereby significantly harm the interests of those affected,
2. Intellectual property rights, in particular copyrights, would be violated by making environmental information available or
3. through the disclosure, operational or business secrets would be made accessible or the information would be subject to tax secrecy or statistical secrecy,

the application must be rejected unless those affected have consented or the public interest in the announcement outweighs it. Access to environmental information on emissions cannot be refused

on the grounds set out in points 1 and 3. Before the decision on the disclosure of the information protected by sentence 1 numbers 1 to 3 is made, those affected must be heard. The body required to provide information must generally assume that the information is affected within the meaning of sentence 1 number 3, insofar as the information transmitted is marked as trade and business secrets. If the body required to provide information requires this, those potentially affected must demonstrate in detail that an industrial or commercial secret exists.

(2) Environmental information that private third parties have transmitted to a body required to provide information without being legally obliged to do so or without being able to be legally obliged to do so, and the disclosure of which would have a detrimental effect on the interests of the third parties, may not be made accessible to others without their consent unless the public interest in the announcement outweighs it. Access to environmental information about emissions cannot be refused based on the reasons mentioned in sentence 1.



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