

Brussels, 01-07-14

TO:

Vice-President Fontaine-Vive
European Investment Bank
100, Boulevard Konrad Adenauer
L-2950 Luxembourg
Cc: Hakan Lucius, EIB CSO unit

Subject: Upcoming EIB Transparency Policy review

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Dear Vice-President de Fontaine Vive,

As the EIB prepares its review of its 2010 Transparency Policy, the signatories of this letter wish to convey key positions and concerns regarding the Policy and how we believe it needs to be amended. A detailed assessment of the draft will follow after its public release through the official consultation process.

First of all, civil society welcomes the revision of the Policy. Regarding the consultation process, we take note of the announcement of a stakeholders meeting to be held on 10 July 2014. However, we would like to ask for a second round of consultations to take place via a second stakeholder meeting after the summer break. The short notice announcement and timing of the 10 July meeting do not allow sufficient and sound consultation with civil society. Indeed, it is crucial for the transparency policy of the EIB to be adopted following a fully inclusive and meaningful consultation process.

We welcome the steps taken by the EIB to increase its level of transparency in previous years, including through signing the Internal Aid Transparency Initiative (IATI) and the launch earlier in 2014 of an online registry of environmental documents. Nevertheless, structural issues with the transparency policy need to be addressed in the process of this revision.

Drawing on our experience with the implementation of the Policy, our main conclusion is that, despite significant progress, there is a need to ensure better access to information by affected people, a more pro-active disclosure of documents, a narrower definition of the exceptions and a stronger and particularly more expeditious appeals mechanism, which is less cumbersome and time-consuming than the current complaints mechanism.

The EIB openness policy has to take into account and fully comply with the EU legislative framework on transparency and public disclosure, including Article 15 of the TFEU, which states that *“in order to promote good governance and ensure the participation of civil society, the European institutions, bodies, offices and agencies shall conduct their work as openly as possible”*. The right to access information held by public bodies, which includes bodies like the EIB, is widely recognised as a fundamental human right, and openness policies need to reflect that in practice. Obligations derived from Regulation (EC) no. 1367/2006, known as the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, should be used, among other references, as a basis for drafting of the new policy. Genuine public participation in decision making around policy processes should be of utmost importance for the Bank.

The European Parliament has repeatedly called on the EIB to increase the transparency of its operations and to make more information available. The resolution of 11 March 2014 on the EIB's Annual Report 2012 (2013/2131(INI)) *“calls on the EIB to increase further the transparency and accessibility of its activities, evaluations and outcomes through better access to information, both*

internally to EIB staff, by incorporating participation at relevant internal EIB meetings, and externally, for example on its website”.

In support of our common interest to make the EU Bank fully accountable to EU and non-EU citizens in the future, we therefore put forward the following list of recommendations for reform of the Policy. These initial recommendations focus on four aspects of the Transparency Policy that are of particular concern, namely:

(1) Access by affected people to project information

- The new policy should impose a direct obligation on the EIB to provide information to communities affected by EIB projects in a manner and format which is accessible to them, through precise provisions on access to information. Complete and timely information should be made available at the local level and key information should be produced in an accessible language and form.
- A mechanism for early public notice should be established. This should require the Bank to indicate how and when it and the borrower will notify a community that a project or programme expected to affect them is under preparation and require that such communications form an integral part of publicly available preparatory project documents.
- Information for affected people should not only be provided through the website; the Bank should also be required to put in place other communication means which are suitable for affected communities which may not have access to electricity, let alone the Internet.
- The new External Lending Mandate of the EIB for the period 2014-2020 states that, *“where possible, project completion reports related to EIB financing operations shall be published excluding confidential information”*. The new policy should build on that requirement.
- The policy should be gender sensitive.
- Information about all banking activity and bank financed clients’ activity should be made available in a standardised and open data format through the website on the project (or other lending activity) dedicated pages.

(2) Disclosure of information by the Bank, third parties and the regime of exceptions

- Public disclosure requirements should be made part of binding language in all contracts, partnership agreements and legally binding documents between the EIB and others.
- Full public disclosure should be the norm, subject only to the regime of exceptions in the policy. When disclosure is denied, the EIB should bear the burden of showing that the information requested falls within the scope of one or more exceptions. All of the exceptions in the policy should adhere to strict standards of harm; referring generally to business confidentiality is not sufficient in this regard.
- The EIB should indicate clearly, for example by blacking out or inserting notices in electronic document, what text has been removed, so that requesters are aware of redactions, of how much information has been redacted, and from which parts of the documents.
- As with the EU Bank, enhanced transparency rules for the governing bodies should replace the currently overbroad exceptions relating to these bodies in the current Policy. For example, more information about governing body meetings should be available, and Board of Directors meetings opened to external observers. Documents should be made public well in advance of Board hearings, generally at the same time as they are sent to the Board.
- As a public institution with a commitment to transparency, the Bank should not do business with financial intermediaries which refuse to make data on their beneficial owners or their investors publicly available.

- As far as intermediated lending is concerned, we call on the Bank to respect the EP resolution of 11 March 2014, which *“reiterates and accentuates the Bank’s responsibility in enhancing the level of transparency in the selection of financial intermediaries and partners for co-financed projects and as regards the final beneficiaries”*.
- As a public institution with a commitment to transparency, the Bank should ensure that all beneficiaries, whether corporations or financial intermediaries, that are incorporated in different jurisdictions must be obliged to disclose country level information about their sales, assets, employees, profits and tax payments in each country in which they operate in their audited annual reports.

(3) Oversight and appeals system

- Anyone who believes that the EIB has failed to respect its access to information policy has the right to have the matter reviewed by an independent and authoritative body. The existing complaints mechanism of the EIB suffers from limitations on seeking redress for violations of the right to information due to the procedure being unduly cumbersome and time-consuming.
- At the same time, other legal mechanisms or institutions responsible for overseeing the EIB’s operations are difficult for citizens to access. The limited mission of the European Ombudsman is also problematic in the context of access to information appeals. It is perhaps significant that the Ombudsman has so far not found the EIB to be responsible for “maladministration” in even a single case.

(4) Stakeholder engagement and public consultations

- The EIB should respect its commitment to engage stakeholders as constructively as possible. CSOs should be involved in the Bank’s policy processes by default, and measures should be taken to enable participation by CSOs in drafting and preparation of policy documents. Public consultations should not be restricted to a limited (or selected) number of documents and policies, but should be conducted for all of the Bank’s plans, policies and strategic documents.
- On a project level, the policy imposes binding requirements in terms of outreach, accessibility, format and frequency of consultation and participation of stakeholders on project implementers and financial intermediaries.

We hope that you find our comments and recommendations useful and constructive for the upcoming consultation process and we hope that you take them into consideration. It is in our common interest to ensure that the new policy is practical and fully in line with people’s human right to access information.

Best regards.

List of signatories:

Article 19

Centre for Law and Democracy

Counter Balance

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The Global Transparency Initiative

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