

Communications and Information Department
European Investment Bank

Nov. 7, 2005

Dear EIB:

The Oct. 20 draft Public Disclosure Policy contains some ambiguities that could impair discussion of their merit. I would like to address these areas through a series of questions that could profitably be answered before the close of the comment period and the Nov. 18 public consultation meeting.

Some of the ambiguities are very relevant to a central issue: the treatment of confidential information.

Structurally, one important general question is prompted by the organization of the proposal. The specific rules appear to be contained in Annex I, but the preamble discussion of policies and principles is both lengthy and in some cases so specific that it could be viewed as a part of the policy itself. What is the legal relationship, if any, between parts I-IV and Annex I?

More specific questions begin with Section 26, in which it is stated: "The EIB has a legal obligation to respect business confidentiality." The precise citation for this obligation is not provided. The section goes on to say that the EIB mandates provide it with "operational and financial autonomy to enable it perform effectively as a financial institution." More detail on this argument would be beneficial. If the legal counsel at the EIB has addressed this issue, their memos would be instructive. Please consider this a formal request for such memos to explain this "legal obligation."

Section 27 mentions "European and national regulations and banking sector standards" relating to confidentiality." If the EIB intends, as stated, to remain in compliance with such standards, it is essential that the EIB state exactly which standards are incorporated by reference. The need for more precision is compounded by the looser reference in Section 28 to "other standards and practices applied by the banking and financial community..." This same type of language is used in Article 4 1 (vii). Without precise identification of these "professional secrecy" standards, the policy remains nebulous and subject to interpretation.

In Section 11 there are two sentences concerning transparency towards capital markets. Is this policy laid out in greater detail in any EIB documents? The first sentence says, "The EIB's disclosure requirements and limitations, vary depending on the legal and regulatory regimes of markets where the Bank's securities are offered." What does this mean in practice? Where is this variability defined? If there are EIB documents on this topic, we would request that the EIB release them. Similar ambiguity exists regarding the second sentence: "The Bank seeks to avoid selective disclosure to ensure all parties have a [sic?] fair access to its information." Again, is this policy laid out for

the staff and interested parties? Are there any circumstances where an evenhanded policy of dissemination can't be followed?

Does Section 41 mean to say that no access will be provided to the full Environmental Impact Statement? As it stands, it seems to say that access will be restricted to the Non-Technical Summary.

Concerning the annual report's listing of projects, noted in Section 45. It would be useful to know what the criteria for inclusion are? For example, does the annual report cover all signed Finance Contracts from the relevant year?

In Section 47 on global loans, the language, while seemingly permissive, does not clearly indicate that intermediary banks may release information on loan activity. Is this the case?

Also concerning Section 47, is there any legal impediment that would prevent the EIB from establishing disclosure standards for intermediary banks?

Regarding Section 48, does the EIB intend to release information on the subjects under evaluation by the Inspector General in advance of the publication of the reports following board discussion?

Is the opening section of Article 4 1, where it refers to "access to all or part of a document..." intended to be the guarantee that documents will be disclosed, minus only those portions subject to specific exemption?

Moving to Article 4, 1 (i) the exception for "the public interest." Does this provision also cover the EIB itself? Also, from what perspective is "the public interest" determined as regards a disclosure involving the international relations of an EU member state?

On Article 4 1 (iv), does the "legal advice" exemption encompass the entire work product of the legal department, whether or not it relates to specific legal actions?

On the "commercial interests" clause, Article 4 1 (vi), is there any further definition of this term elsewhere in the disclosure policy? Would it be accurate to interpret "undermine" as meaning a continuum of possible consequences, ranging from minor consequences up to consequences that would have greater, undermining, results?

In Article 2, should the "all or part" language be read to permit the partial disclosure of documents, excepting the sections that would "undermine" the decision-making process?

More broadly on Article 2, what disclosures would undermine the Bank's decision-making process? Is there a standard for determining what consequences could be negative in this regard? Has the Bank prepared any study on this topic?

Article 3 seems to cover the same ground as Article 4 1 (vi). Please explain the purpose of this separate paragraph on “confidential” information. Is the Bank bound to accept and honor all representations of confidential? What is the definition of confidential?

On Article 8, Recourse. How does mention of the Ombudsman relate to Section 56, which appears to suggest that compliance with the rules will be overseen by the “Group Chief Compliance Officer? What are the intended procedures for appealing denials of access to information?

The EIB should clarify these issues before the Nov. 18 public meeting in order to facilitate further discussion. I look forward to your response.

Sincerely yours,

Toby McIntosh
freedominfo.org
202 452-4498
tmcintosh@bna.com