

Public consultation on the EIB Group Transparency Policy

Explanatory note

The European Investment Bank (EIB) invites the public to contribute to the review of the EIB Group Transparency Policy (EIB-TP).

This explanatory note, produced for information purposes, explains the context for the review, provides an overview of the EIB-TP and outlines the main changes currently under consideration.

The [public consultation web page](#) provides more information about the review, including a **draft revised EIB-TP**, which shows the amendments currently under consideration as well as brief explanations thereof, and a set of **consultation questions**, which are intended to guide the public consultation, soliciting views about specific transparency matters.

Thank you for your engagement with the European Union's Bank!

Context for the review

The EIB is the bank of the European Union (EU). In the EU, the right of access to documents is a [fundamental right](#). It is subject to principles and conditions defined in accordance with the [Treaty on the Functioning of the European Union \(TFEU\)](#). The Treaty provision on access to documents applies to the EIB when it exercises its administrative tasks. [Regulation \(EC\) No 1049/2001](#) lays down the general framework on access to documents applicable to EU institutions. [Regulation \(EC\) No 1367/2006](#) establishes a right to access environmental information held by EU institutions as well as EU bodies such as the EIB. It provides for the collection and dissemination of environmental information.

As a bank, the EIB holds information and documents covered by the duty of professional secrecy and banking sector standards. The EIB must therefore abide by applicable market rules (e.g. [Regulation \(EU\) No 596/2014](#)).

This legal context has not materially changed since the last review of the EIB-TP in 2015.

The European Parliament and the European Ombudsman have commented on the EIB-TP since the last review. In particular, the Ombudsman made a number of suggestions for improvement aimed at encouraging the EIB to improve the formulation of certain articles in its Transparency Policy. The EIB proposes to take these comments into account as part of this review (see below).

As an International Financial Institution (IFI), the EIB also takes into account the transparency policies and practices of its peers.

The EIB Group Transparency Policy

The EIB-TP sets out the EIB Group's approach to transparency and stakeholder engagement. The EIB Group consists of the [EIB](#) and of the [European Investment Fund \(EIF\)](#).

The EIB-TP is based on the guiding principles of openness, ensuring trust and safeguarding sensitive information, willingness to listen and engage (Section 2 of the EIB-TP). These principles apply to the EIB Group.

The rest of the EIB-TP applies to the EIB only. The EIF has established an [EIF Transparency Policy \(EIF-TP\)](#), which adapts the principles applicable to the EIB Group and the corresponding processes to the EIF's specific business and governance context. This review and public consultation concern the EIB-TP only. The EIF will review the EIF-TP as appropriate in the light of the revised EIB-TP.

The EIB-TP is based on a principle of disclosure – all information and documents can be disclosed upon request, unless covered by limited exceptions to protect legitimate interests. It foresees the proactive publication of certain information and documents, such as environmental and social documents, as well as policy and project-related information on the EIB's website.

The EIB-TP ensures a higher level of transparency than required by the Treaty. Its main features can be summarised as follows:

- ✓ **Publication** (Section 4 of the EIB-TP). The EIB engages to [publish certain information and documents](#) proactively (i.e. without waiting for an access to documents request). For example, the EIB systematically publishes institutional information, policies and strategies, project-related information, procurement information and tender notices for the EIB's own account, accountability- and governance-related information. Moreover, the EIB makes available [environmental and social documents](#) through the [EIB Public Register](#). The EIB is continuously developing the EIB Public Register to ensure that environmental information is progressively made available to the public.
- ✓ **Presumption of disclosure of information and documents** (Section 5 of the EIB-TP). All information and documents held by the EIB are subject to disclosure upon request, unless disclosure exceptions apply. Thus, the EIB-TP is not limited to documents only or to administrative tasks only.
- ✓ **Limited disclosure exceptions to protect legitimate interests** (Section 5 of the EIB-TP). The EIB-TP recognises that, whilst the EIB is committed to a policy of presumption of disclosure and transparency, it also has a duty to respect confidentiality. National regulations and banking sector standards covering business contracts and market activity may also apply. There are therefore certain constraints on the disclosure of information and documents in order to protect legitimate interests. Disclosure exceptions are modelled on the general framework applicable to EU institutions, while taking into account the specificity of the EIB as bank.
- ✓ **Non-discrimination** (Section 5 of the EIB-TP). The EIB-TP recognises a right of access to information and documents to every member of the public regardless of their citizenship, place of residence or registration.
- ✓ **Timely replies** (Section 5 of the EIB-TP). The EIB replies to disclosure requests within 15 working days. This time limit may be extended in the case of complex requests. At

any rate, the EIB endeavours to reply no later than 30 working days. These timelines are met in the vast majority of cases.

- ✓ **Right to an independent recourse** (Section 6 of the EIB-TP). Every member of the public has a right to lodge a complaint concerning alleged maladministration with the operationally independent [EIB Group Complaints Mechanism \(EIB-CM\)](#) and the [European Ombudsman](#). Depending on the circumstances, additional means of recourse include [Court of Justice of the European Union](#) and the [Aarhus Convention Compliance Committee](#).
- ✓ **Stakeholder engagement and public consultation** (Section 7 of the EIB-TP). The EIB does not merely seek to be transparent, but also to [engage in a constructive dialogue with stakeholders](#). To this end, the EIB-TP notably foresees [public consultations](#) on selected policies.
- ✓ **Other activities to promote transparency** (Section 8 of the EIB-TP). The EIB promotes transparency in several ways, for example by publishing information about its operations outside of the EU in the open data format developed by the [International Aid Transparency Initiative \(IATI\)](#).
- ✓ **Transparency about performance** (Section 9 of the EIB-TP). [Annual reports on the implementation of the EIB-TP](#) consistently show high levels of disclosure and compliance with deadlines.

[The draft revised EIB Group Transparency Policy](#)

The draft revised EIB-TP aims to incorporate key lessons learned over the last five years of experience and to improve the clarity and consistency of the EIB-TP. This section outlines the main changes currently under consideration. For a more complete overview, please refer to the draft revised EIB-TP published on the [public consultation web page](#).

Section 1 – Background and Purpose

The first edit would acknowledge the EIB's special responsibility to be open and transparent, which in turn contributes to the quality and sustainability of EIB-financed projects and public trust in the EU Bank. Express reference to EU transparency requirements and international best practice would be made.

A provision would clarify that the revised EIB-TP applies from the date it is adopted, without prejudice to processes that are ongoing on that date. The objective is to avoid changing the rules applicable to a task (e.g. the handling of a disclosure request) whilst it is being performed.

Section 2 – Guiding Principles

The principle of “ensuring trust and safeguarding sensitive information” acknowledges the need to maintain the confidence and trust of clients, co-financiers and investors. A reference to “other relevant third parties” would be added as, depending on the operation in question, other third parties may be relevant (e.g. guarantors).

Under the principle of “willingness to listen and engage”, a new provision would attest that the EIB Group is committed to respecting human rights in all of its activities and does not tolerate retaliation against individuals or organisations for exercising rights under the EIB-TP.

Section 3 – The Institutional Framework

Proposed amendments to this section are editorial. For example, minor edits to the last provision would align it more closely to Article 15(3) of the TFEU, without affecting the scope or substance of the EIB-TP.

Section 4 – Publication of Information

Additional information and documents would be included in the list of documents that the EIB proactively publishes (e.g. evaluation reports, environmental, sustainability- and climate-related information). In particular, reference would be made to the publication of the agendas and minutes of the meetings of the EIB Board of Directors.

Cross references to Section 5 would entail that the EIB does not proactively publish information or documents that fall under disclosure exceptions. It would also be clarified that the EIB cannot publish information or documents if doing so would violate EU law (e.g. on market abuse).

Section 5 – Disclosure of Information

A footnote would clarify that information and documents “held by” the EIB means information or documents drawn up by the EIB or received by it and in its possession, in all areas of activity of the EIB. It would also be stated that the EIB must pay particular attention to all disclosure requests, especially those concerning environmental information.

Insofar as disclosure exceptions are concerned, it would be clarified that the EIB cannot disclose information in violation of EU law (e.g. on market abuse). Following the example of Regulation (EC) No 1049/2001, the exception on “public security” would be added. It would also be expressly stated that the EIB cannot disclose information that would undermine the safety and security of individuals (e.g. by exposing them to retaliation).

A new subparagraph would be added to the commercial interests provision to give examples of commercial interests cases that are common in banking. Recital 15 of Regulation (EC) No 1367/2006 would be quoted to illustrate the relevance of confidentiality agreements for assessing the applicability of the commercial interests exception. The EIB would continue to assess each case individually to determine whether a public interest exists that would override the protection of legitimate interests.

Following a suggestion from the European Ombudsman, the presumption of non-disclosure related to information and documents collected and generated during investigations, including after these have been closed, would be removed. The EIB would assess disclosure requests concerning finalised investigations on a case-by-case basis. It would consider providing summaries of the findings of investigations. References to relevant third parties (e.g. the European Anti-Fraud Office, the European Public Prosecutor Office and national authorities) would be added.

A reference to information (in addition to documents) would be included in the provision on third-party consultations, as the EIB-TP applies to both documents and information.

It would be recognised that EU institutions, bodies or agencies may request the EIB not to disclose information or documents originating from them without their prior agreement, ensuring equal treatment with EU Member States. In all cases, objections have to be based on the disclosure exceptions of the EIB-TP.

The provision that the EIB does not object to third parties making information available would be replaced with a provision (in Section 8 on “Promoting transparency”) encouraging project promoters, borrowers and other competent parties to be open and transparent, whilst taking into account the need to safeguard the legitimate interests protected by the EIB-TP, applicable laws and regulations.

Following a suggestion from the European Ombudsman, the reference to information on individual allocations made by intermediary banks would be removed. The disclosure upon request of information and documents held by the EIB in relation to intermediated lending would be assessed on a case-by-case basis according to the provisions of the EIB-TP.

Experience shows that disclosure requests are made in writing, which enables the EIB to formally record, handle and report on them. To ensure good service to applicants, the written form would be required for disclosure requests under the EIB-TP. At the same time, it would be expressly stated that EIB staff would continue to respond informally to oral requests.

The possibility of conferring informally with the applicant to find a fair solution would also apply “when the information is not readily available or complex to collate”, in line with the fact that the EIB-TP applies not only to documents, but also to information.

Following a suggestion from the European Ombudsman, the footnote concerning the extension of the time frame to reply to a disclosure request would be clarified. The revised footnote would refer to the typical cases in which the EIB may need more than 15 working days to fulfil a request. It would also commit the EIB to inform the requester about the delay and the reasons thereof.

Section 6 – Provisions for Complaints and Appeals

No material change is currently being considered.

Section 7 – Stakeholder Engagement and Public Consultation

A new provision would acknowledge the several forms that EIB’s policy-level stakeholder engagement can take – public consultations, workshops, conferences, seminars, other meetings and events.

A new provision would attest that the EIB upholds human rights, including as regards access to information, participation and remedy. The provision would thus support stakeholders’ freedom to engage with the EIB and project promoters without suffering retaliation. The EIB would follow up on allegations of intimidation or reprisal.

Stakeholder engagement at project level is governed by relevant provisions of EU law and by the EIB [Environmental and Social Standards](#). The Standards confirm the EIB’s commitment to the principles on stakeholder engagement and encourage project promoters to follow good practices. The provisions of this section would be revised to better focus on transparency whilst avoiding repetitions and overlaps with the Standards.

Section 8 – Promoting Transparency

Provision would be made for the EIB to encourage project promoters and other competent parties to make environmental and social information available to the public, to be open and transparent on their relationship and arrangements with the EIB and to follow the transparency

principles of the EIB-TP, without prejudice to legitimate interests, applicable laws and regulations.

Two new provisions would acknowledge the role of inter-institutional cooperation, including the exchange of information and documents, and the EIB's support for the recommendations of the Task Force on Climate-related Financial Disclosure (TCFD).

Section 9 – Responsibilities

It would be expressly required that the EIB shall provide internal guidance and training on transparency.

Further reviews of the EIB-TP, including public consultation with EIB Group stakeholders, would be considered every five years. This amendment would recognise that a full reopening of the EIB-TP may not be necessary if experience with it is satisfactory. It would however be possible to make the updates that may become necessary from time to time, e.g. in the light of changes in the EU legislative framework.