

The CEE Bankwatch Networks Mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation

PUBLIC PARTICIPATION, ACCESS TO INFORMATION AND DEVELOPMENT BANKS IN THE UN ECE REGION

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1. INTRODUCTION

There are a number of Development Banks operating in the UN ECE Region, all ranging in size, mandate and scope of operations and they all use public money to ensure that the lesser developed areas of our region receive additional support. Unfortunately, they are linked by another common denominator, this being the fact they all struggle with access to information and public participation as well as access to justice related processes.

The CEE Bankwatch Network and the Bank Information Centre have examined the three largest development banks operating within our region: the European Investment Bank (controlled in full by Aarhus Convention Signatories), the European Bank for Reconstruction and Development (with a 64.3 % stake held by Aarhus Convention Signatories) and the World Bank Group (with a 34.8 % stake also held by Aarhus Convention Signatories).

Unfortunately, the bank that should theoretically be the most advanced in the implementation of the Aarhus convention – the European Investment Bank – is systematically trying to prevent public participation. In Addition, other institutions, where the Aarhus convention countries play an important role fail to maintain the convention in number of areas.

Although the public is not permitted to view the positions or voting records of the Executive Directors on policies that are relevant to public participation, access to information or access to justice, we have learned that it is often the countries who sign the convention who try to prevent improvements in these policies.

Therefore the Working Group of the Parties of the Convention on Public Participation in International Forums could play an important role in promoting necessary changes in Development Banks.

CEE Bankwatch Network

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2. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION IN THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

Background

The European Bank for Reconstruction and Development (EBRD) was established in April 1991 in London with the aim of assisting the countries of CEE and CIS regions in their transition to market-oriented economies. The Bank is one of the main sources of project financing in the region.

Currently the EBRD has 61 members (59 countries, the European Community and the European Investment Bank), including 27 countries of operation in Central and Eastern Europe and the Commonwealth of Independent States (CIS). It provides loans, equity investments and guarantees private and public sector projects in the areas of finance, infrastructure, industry and commerce in 27 countries of the region. Its activities include the promotion of the private sector, the strengthening of financial institutions and legal systems, and the development of the infrastructure needed to support the private sector. The EBRD encourages co-financing and foreign direct investment from the private and public sectors, helps to mobilise domestic capital, and provides technical cooperation in relevant areas. It works in close cooperation with other international financial institutions such as the World Bank, International Monetary Fund, European Investment Bank and other international organisations.

EBRD safeguard policies

The two bank policies dealing with access to environmental information and public participation are the Public Information Policy¹ and the Environmental Policy². For years NGOs criticized the bank for number of weaknesses in its safeguard policies which in many cases limited public involvement in the decision making process. In 2002 the bank initiated policy reviews and following public consultations, approved a new Public Information Policy and Environmental Policy in 2003. Despite the fact these new policies represented a significant step forward, a number of important issues remain unaddressed. The CEE Bankwatch Network seeks assistance in its activities directed at further improving EBRD safeguard policies in areas outlined below.

Bankwatch sees room for improvement in EBRD policies with regard to access to information and public participation in the following major areas:

The release of Environmental Impact Assessments:

The EBRD should remove the irrational differentiation between public and private sector projects and make EIAs for all projects available to the public for a period of 120 days prior to Board approval.

We insist that the EIA be released 120 days prior Board approval, regardless of the type of project: public or private³. Thus the Asian Development Bank's new environmental policy adopted in November 2002 does not make any distinction between the release of EIAs for public and private sector projects: "The 120-day rule applies to all public and private sector category A and selected category B projects deemed to be environmentally sensitive."

¹ <http://ebrd.com/about/policies/pip/main.htm>

² <http://ebrd.com/about/policies/enviro/policy/main.htm>

³ Currently EIAs for private projects with Category "A" status are required to be released at minimum 60 days prior to Board approval of the project, while 120 days are required for public (i.e. state sponsored projects).

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In its response to public comments asking for equal periods of EIA release⁴, the EBRD staff did not give any reasonable arguments demonstrating a need for different consultation periods for private and public sector projects. The 2003 Review of the Implementation of the Information Policy⁵ shows that of the seven projects started in 2003, none would have complied with the 120-day period.

As a final point, if a project affects the environment, it makes no difference whether the project is private or public.

**The release of Environmental Impact Assessments on the Internet:
The EBRD should either require the release of the full EIA on the project sponsor's website or, if the project sponsor does not have a website, release the EIA on www.ebrd.com**

Bankwatch welcomes the improvements in EIA disclosure achieved by the new Environmental Policy. With the full EIA reports for category "A" projects available in local languages, the population affected will have a better chance to make comments and suggestions for improvements. However, the EIA should be available on the Bank's web site as well, as is for instance the case with IBRD-funded operations. Any interested party or person must be guaranteed the chance to receive a full copy of the EIA report.

According to the Environmental Policy "The EBRD strongly encourages project sponsors to place EIAs on Web sites to improve public accessibility to the documents. The Bank's Web site will, in such cases, indicate how to find the EIA on the sponsor's Web site and provide a link to the sponsor's Web site." Based on existing experience it is clear that mere "encourag[ment]" does not prove sufficient.

The EBRD staff's response to NGO comments to draft Policy stated⁶ that "the Bank has been made aware that frequently, members of the affected local public do not have access to computers or good phone lines and web sites take too long to download information". Such reasons can not be seen as a real excuse for not publishing EIA documentation either on the project sponsor's or the Bank's website, as the Internet in this regard is seen as supplementary source of information rather than the sole source of information. Furthermore, the EBRD has already demonstrated that it is able to release Executive Summaries of EIAs on www.ebrd.com and therefore, there should be no obstacles, technical or otherwise, to releasing the EIA documents.

**Social Impact Assessment:
The EBRD projects should be subject to the Social Impact Assessment**

We welcome the fact that the EBRD Environmental Policy also incorporates health, safety and community issues⁷. Nevertheless, those issues are only mentioned in the broader definition of the scope of the policy, without practical provisions that would define their implementation.

Since the EBRD is committed to sustainable development, which also includes socially sound investments, we believe that the Bank's operations should be subject to Social Impact Assessments. These should contain not only "health, safety and community issues, such as cultural heritage, involuntary resettlement and impacts on indigenous people", but also issues related to unemployment, migration of workers and other social issues.

⁴ EBRD Environmental Policy: Summary of Staff Responses to Public Comments, page 47.
<http://ebrd.com/about/policies/enviro/policy/comment.pdf>

⁵ <http://ebrd.com/about/policies/pip/report03.pdf>, page 10.

⁶ EBRD Environmental Policy: Summary of Staff Responses to Public Comments, page 50.
<http://ebrd.com/about/policies/enviro/policy/comment.pdf>

⁷ EBRD Environmental Policy, paragraph 3.

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Public Hearings:

The EBRD has to make public hearings a binding part of public consultations

The EBRD Environmental Policy says: “The EBRD does not have specific requirements for public hearings, but encourages development of appropriate methods of meaningful consultation...” (Annex 2 – Consultation with the public). We believe that public hearings should be a binding part of consultations. Most of the countries that have EIA legislation include public hearings in the consultation process. The procedure should guarantee that public hearings provide both information to the affected public as well as allow for their feedback on the EIA documentation and the project as such.

Release of Environmental Analyses:

The Environmental Analyses for category “B” projects should be publicly available for a period of 60 days prior to Board Approval of the project

Currently only the summary of the Environmental Analysis is made available to the public for category “B” projects. We believe that the full document should be disclosed in local languages, as category “B” projects may also present severe environmental and social impact. Bankwatch and other NGOs argued that Environmental Analyses for category “B” projects should be publicly available for at least 60 days prior to Board approval, both in public and private sector projects.

The EBRD Environmental procedures⁸ state that the Environmental Analysis “is carried out on operations or activities where any future environmental impact are potentially significant.” Those environmental impacts should be disclosed to the public, including proposed mitigation measures.

Environmental Analyses should be available for viewing at the Bank’s Business Information Centre in London, and also be posted in a timely manner on the EBRD website (or, alternatively, the EBRD website should provide a link to the website where the EA can be found). A copy of the EA and the Executive Summary should also be made available at the EBRD Resident Office in the country of the project’s location.

Oil Spill and Response Plans:

The EBRD should require the release of emergency and oil spill response plans as part of EIA documentation

Neither the Public Information Policy nor the Environment Policy contains adequate provisions requiring the release of emergency plans by the project sponsor.

Bankwatch understands some of the concerns regarding the sensitive information that could be part of these documents. However citizens who may be affected by a project are not interested in sensitive information, but only in issues such as early warning systems, evacuation plans, health protection and similar questions. A number of examples already exist of how such documents could be released - it is only a matter of organising the documents in a way that enables sensitive information to be easily removed.

The EBRD staff also confirms the importance of making response plans available: “Bank recognises the need for increased reassurance, particularly on issues such as evacuation plans, health protection, response to significant events, etc. Therefore, if the Project Sponsor believes that the plan cannot be released in full, the Bank will work with the Project Sponsor to release summaries of protection plans either in EIS or in separate documents, as part of the public consultation process.”⁹ Unfortunately there is no binding requirement for release of such documentation in the bank’s policies.

⁸ <http://ebrd.com/about/policies/enviro/procedur/procedur.pdf>

⁹ EBRD Environmental Policy: Summary of Staff Responses to Public Comments, page 48.

<http://ebrd.com/about/policies/enviro/policy/comment.pdf>

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Release of Project Summary Documents (PSD):

The EBRD should release both public and private PSDs at least 60 days prior to Board approval without any exception

We believe that the EBRD should remove the current differentiation between private and public sector projects. For the same reasons that the time period for the EIA review should be the same, the release of Project Summary Documents should be the same for private and public sector projects.

Information about project implementation, environmental, health and social impacts, and proposed mitigation plans should be made publicly available on a regular basis.

Generally, information about project implementation and operation is not available to the public unless the project sponsors are willing to release such information or are required to do so by national legislation.

The EBRD staff have a very limited amount of time for monitoring the implementation of a loan, and increased disclosure would allow stakeholders to warn the EBRD when actual impact differs from projected impact.

However the EBRD argues that “project implementation and environmental impacts and performance are part of an evaluation and are reported on in the relevant documents...”¹⁰, we do not consider such reference sufficient as the bank does not publish evaluation reports for every individual project.

The Independent Review of refusal to disclose information:

The EBRD should set up clear procedures allowing for an independent review of any refusal to disclose information.

The right to access information cannot be guaranteed unless shareholders have the right to appeal to an independent body any denial of information disclosure. Such right of appeal is crucial to the success of any disclosure system because in the absence of a review body, there is no independent check on whether a refusal is in accordance with the Public Information Policy.

Such a process is recognised in the national access-to-information legislation of most EBRD shareholding countries. These laws provide for appeal to an independent administrative body and/or the courts. One example: this principle is practised by the UNDP in its Public Information Disclosure Policy, which provides for the establishment of an Oversight Panel for appeals.

The independent review of any denial of information disclosure should be clarified both in the Information Disclosure Policy as well as in the newly set up Independent Recourse Mechanism¹¹, which would be the logical body for an independent review.

Timelines for disclosure of information and reasons for refusal:

The EBRD should set a timeline for responding to requests for disclosure of information, and set up procedures for making any refusals in writing, including giving reasons for the refusal.

In our experience, the EBRD usually reacts to requests for information within a reasonable time. Nevertheless, a clear timeline for responding to such requests would reduce public confusion in the countries of operation. We also believe that written reasons should be given anytime the EBRD declines to make information public. This is not only necessary for appeal, but also because those who make the request have a right to know why their request has been refused. Such procedures are the usual practice in most of the shareholding countries, which have laws regarding access to information.

¹⁰ Public Information Policy: Summary of Staff Responses to Public Comments, page 9.
<http://ebrd.com/about/policies/pip/comment.pdf>

¹¹ <http://ebrd.com/about/policies/irm/main.htm>

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3. “EIB’S INFORMATION AND PUBLIC DISCLOSURE POLICY” – REALITY CHECK

Background

New information policy

For several years now NGOs have been demanding more transparency and clearer rules on access to information and documents from the European Investment Bank (EIB). In October 2002 the EIB released its information disclosure policy after two years of revision. NGOs who during those two years tried to come up with constructive suggestions to both the process of policy revision and the policy itself found out that hardly any of their comments and suggestions made it into the document. The policy does not live up to either the transparency standards of other international financial institutions or the requirements of the Aarhus Convention.

The wording of the Information Policy is filled with “non-committal phrases” promising to release information “whenever possible” and “as early as feasible”. These limitations, which are left to the complete discretion of the EIB, do not provide a solid basis for affected or interested people to obtain needed information. Moreover, the EIB still gives far too much authority to project promoters (private or public clients of the EIB) to decide if information about the project for which they sought financing will be publicly released or not. That approach undermines the basic “right to know” of the affected citizens and is unacceptable in the 21st century for a major public institution like the EIB.

In 2001 NGOs positively commented on the efforts of the Bank, especially President Maystadt’s offer that “the EIB will come back with a clearer definition of what it considers to be reasonable grounds for accepting confidentiality requests from its borrowers”. Unfortunately that has not happened.

Projects in the pipeline

The project pipeline list is a central feature of the Bank’s new information policy and as such has responded positively to NGO requests in recent years. However, the fact that not all the projects considered have appeared on the website is definitely a significant failing. This refers to the promoters’ right to withhold information described above and is unacceptable. Regarding the stage of the project cycle where the projects must appear on the list, the policy states: “Projects are introduced onto the pipeline list before a decision by EIB’s Board of Directors, when the Bank has advanced sufficiently in discussions with the project promoter [...]”. Unfortunately this is not always the case. For example, an SME project to Syria entered the list on May 30, 2003, with an approval date of April 29, 2003; the Municipal Water Infrastructure II project for Romania also entered on May 30, 2003 and was approved on February 25, 2003; the IKEA New Länder project in Germany entered the list on May 7, and was approved on March 11. Such a procedure makes it impossible for interested citizens to get involved before EIB Board decisions.

EIB’s information policy – reality check

Below you will find some concrete examples of looking for information from the EIB

Slovakia

The Centre for Environmental Public Advocacy (CEPA) has repeatedly requested the Bank, the Slovak Ministry of Transport, Post and Telecommunications, and Slovak Railways to disclose information about a EUR 200 million loan for railway restructuring, approved in 1999. Specifically the group asked for the loan agreement, including conditions apparently put in by the Bank, and a timetable of their implementation as defined in the contract as well as supporting documents such as environmental assessments that were made in connection with this loan. None of these were released. According to the EIB, the Bank “cannot provide the loan contract; it is up to the promoter and/or the competent authority to disclose a loan contract with the Bank, subject to the relevant legal regulations.”

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According to the Slovak institutions "the loan agreement does not allow to publish the agreed loan conditions nor the time schedule for their implementation." Following a positive ruling for CEPA in a Slovak court, the Slovak authorities have to respond to the request again. The case goes on.

Czech Republic

The EIB considered a loan to the Czech Republic for the environmentally highly controversial D8 motorway. NGOs asked for information about the date of the Board decision. The Bank refused claiming that the Board agenda is not for external dissemination and at the same time referred NGOs to the list of projects in pipeline on its website. After checking the list, it became clear that the project was not released there. Further investigation with the Bank as to why the EIB did not put the project on the website was answered thus: "The Czech Government has asked the Bank not to publicize public sector projects until the Parliament has approved them". However, Friends of the Earth Czech Republic received a letter from the Czech government stating that there is no such provision in the Czech legislation. Responding to the NGO complaint sent to the EIB Secretary General, he wrote that his staff acted properly and he rejected the complaint.

Brazil

The Swedish company Stora Enso issued a press release about a project to construct a 900,000 tonnes per year eucalyptus pulp mill for Veracel Celulose S.A. at Eunápolis in the state of Bahia, Brazil. The press release mentioned the EIB's involvement in the project: "Discussions are in progress with the Brazilian Development Bank (BNDES), European Investment Bank (EIB), and Nordic Investment Bank (NIB)". The Veracel project was published in the list of projects that the EIB considers for financing after the public heard about Veracel's loan request in the media. Information about the project appeared on the list of projects in the pipeline only at the end of July 2003, after NGOs initial information requests to the EIB. It took the EIB's bureaucracy almost two months to answer an NGO letter, although they had been in the process of considering financing the Veracel project.

After many phone calls and emails the EIB agreed to consider a meeting on the project with NGOs, which took place on October 21, 2003. The EIB however denied a meeting with a broader number of NGOs and only agreed to meet with the four representatives of a Brazilian local movement and three accompanying European representatives. Furthermore, it was the bank's will to conduct the meeting in Portuguese, but it became clear during the meeting that the EIB's staff were not able to communicate in Portuguese and had not organized a translator. During the meeting the EIB was asked if their staff had prepared any documents evaluating the Veracel project. The answer was "yes", but none of those documents were publicly available. Furthermore, the EIB refused to announce when they plan to decide about the project. They asked for more information from the Brazilian representatives without providing any information themselves.

The project was approved without further consideration of NGO concerns. Moreover, at the end of March 2004 the EIB placed on its website an information note about the Veracel project mentioning that the EIB had had a dialogue with NGOs concerning the project. In response an open letter from 170 organizations and individuals representing civil society from around the world was sent in May 2004 to the President of the European Investment Bank (EIB), Philippe Maystadt, denouncing this attempt by the EIB to misrepresent NGOs and requesting real and meaningful dialogue between the Bank and civil society, especially with those communities affected by EIB financed projects.

EIB's new environmental structure

In 2002 the EIB presented its new environmental structure. NGOs sought information about the increased capacity of the EIB to deal with environmental matters, specifically the number of new environmental specialists hired. The response stated that it was one person: "The person added to ENVU is an environmentalist (Environmental Science, legislation, and management) with working experience in the fields of waste, industry, and pollution prevention." When we asked about the name and contact information of the new person, we got a refusal stating: "[...] initial NGO contacts are coordinated by the Information and Communications Department"

Examples of the level of environmental information available for projects in the pipeline

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IKEA New Länder project, Germany, approved March 11, 2003

Retail outlets of the relevant size fall within the scope of Annex II of the directive 97/11/CEE concerning Environmental Impact Assessment (EIA) and require an EIA according to German legislation. These have been or are in the process of being undertaken.

DBSA Infrastructure Global Loan, South Africa

South Africa has a stringent Environmental Legislation, and DBSA's environmental assessment practices are in line with international best practice.

Landslide Protection Framework Loan, Poland, approved March 2003

The proposed loan will be used to part-finance "soft" and "hard" investments intended to protect against future landslide risk. "Hard" investments, comprising a large number of geographically dispersed schemes, will be designed in accordance with relevant Polish and EU environmental regulations including Environment Impact Assessments where appropriate.

Regional Gas Pipeline (known as Arab Gas Pipeline or Jordanian Gas Transmission Pipeline), under appraisal in December 2003.

The environmental impact of such a project is likely to be limited to mainly temporary disturbances during construction, which will have to be mitigated by appropriate working procedures and by the appropriate reinstatement of the rights of way concerned. Public consultation will be carried out, as would be required within the European Union, by the Royal Scientific Society of Jordan.

Conclusions

Information is only a means to an end. Nobody is interested in information as such, but more and more people, including, not least of all, affected communities and European institutions, are interested in knowing that public European money is spent well on sustainable development and people's benefit. This must also be in the interest of the Bank.

For detailed demands see "NGO call for EIB transparency" at <http://www.bankwatch.org>.

4. NGO CALL TO EIB GOVERNORS AND PRESIDENT MAYSTADT FOR SUBSTANTIAL CHANGES IN INFORMATION POLICY: MORE TRANSPARENCY IS ESSENTIAL

We, the undersigned non-governmental organisations call on the Governors of the European Investment Bank, led by its President, Philippe Maystadt, to undertake greater efforts in fostering timely and adequate access to information on bank's operations for affected communities and general public.

The EIB's latest attempt at an information policy is the revision released in October 2002. The bank's initiative was welcomed as an important step for dialogue with civil society on how to further improve EIB information policy. As a final outcome of the revision process, NGO find the document unsatisfactory. Today, neither communities that are being adversely affected by EIB projects nor the general public have the kind of real access to information needed to protect their interests.

The wording of the Information Policy is filled with "non-committal phrases" --promising to release information "whenever possible" and "as early as feasible". These limitations, which are left to the complete discretion of the

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EIB, do not provide a solid ground for affected or interested people to obtain needed information. Moreover, the EIB still gives far too much influence to project promoters (private or public clients of the EIB) to decide if information about the project for which they sought financing will be publicly released or not. That approach undermines the basic “right to know” of affected citizens, and is unacceptable in the 21st century for a major public institution like the EIB.

Therefore we call on the Governors of the EIB, under the leadership of its President, Philippe Maystadt, to undertake immediate steps to ensure greater transparency. Key documents about projects must be made available in a timely way and in adequate languages to allow for proper consultations with the affected public and communities. Specifically we ask that for all projects it is considering financing:

- The EIB ensures that affected communities, particularly indigenous peoples and other vulnerable minorities, as well as other interested parties are adequately and freely informed and consulted before the approval and throughout the life of their projects.
- All relevant documents be made public at least 60 days before consultations, both in English and in locally appropriate language(s) and accessible to all stakeholders.
- The EIB support only projects that enjoy the demonstrable free and prior informed consent of all affected communities.

Recognizing the added value that interested and well-informed members of the public, particularly locally affected people and non-governmental organizations in the host country, can bring to the environmental, social, cultural and economic impact assessment and monitoring processes, we ask that:

- All EIB social, environmental and anti-corruption policies and procedures be made public in each country of operation.
- Transparency of bank’s internal procedures will be ensured.

More detailed we ask for the following:

Project under preparation

Releasing of documents for projects in pipeline

The EIB Information Policy should define a time period of minimum 120 days prior to Board decision for releasing project related information. The current “as early as feasible in the project cycle” wording allows for a very broad interpretation. Practice shows also that many projects enter the EIB’s web site only after or very shortly before Board’s approval.

Disclosure after a decision has been taken does not foster ownership and cannot be expected to satisfy public demands to participate in project decisions. Meaningful participation requires access to information on all projects that are still in the deliberative process.

Applying confidentiality for releasing information on projects in pipeline.

We demand that all projects under consideration be included into the Project Pipeline. Under current procedures, project information will not occur in the pipeline if “project promoter (or other business partners where appropriate)” oppose inclusion contradicts the goal of participation and partnership. Our rough estimation shows that only about 1/3 of the projects appear in the project pipeline.

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All environmental, social and human rights impact assessments, debt impact analyses, construction agreements and all other project-related information that is relevant to informing people as to the project's risks should be disclosed.

Type of information which could be treated as confidential on commercial/market ground should be clearly defined and described. A full catalogue of project related documents, including documents the EIB intends to keep confidential should be disclosed.

Project Information Document

The EIB should prepare and publicly release for each of its projects a Project Information Document. This document should contain the basic information about the project, the recipient and the contractor. It should contain a brief description of the project with data on full cost as well as amount envisaged from the EIB. If environmental or social concerns arise as indicated by the screening of the project – the document should provide results of environmental and social screening and, if applicable, how the potentially harmful results of the project will be addressed. The document should initially be 5-10 pages in length and should be available from the moment the EIB considers the project. It should be updated as the project develops and should include a list of Factual Technical Documents, such as economic analyses, feasibility studies, or other detailed project information, that is updated as well throughout project preparation. The Project Information Document should also include expected date of Board Decision; estimated date of signing the loan agreement; contact details of the implementing agency and of the person at the bank responsible for the project.

The Environmental Aspect section should also include the stage of the EIA process and the results of public consultation when it is conducted. The section should also provide information outlining where it is possible to obtain EIA.

The section on Social Impacts should outline the impacts of the proposed project on individuals and communities expected to be affected, as well as measures considered for mitigating resettlement and compensation problems, prospects for employment, project consequences on gender relations, as well as the strategy for soliciting public input and making public the results of public consultation.

Global Loans

- Deliberative processes for the approval of global loans must be considered as “projects in the pipeline” disclosed just like other projects. Information must include the implementing agency, conditions attached to the global loan, and the agency's sectoral spending priorities. Possible environmental and social impacts of global loans should be addressed in the information disclosure documents. Intermediary banks receiving global loans should be obliged to follow the EIB's Information Policy as they make use of EIB funds.

Monthly summary of bank's operations.

The EIB should meet the minimum mandatory standards of other International Financial Institutions and publish a monthly summary of its operations, providing details of the name and location of all projects being considered for support, including the name of the applicant company, the size and type of planned support by the EIB, the environmental and social assessment category of the project and the planned dates for a decision on the application. This monthly summary should include notice of any new application for project transactions.

Environmental Impact Assessments

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There is a considerable overlap between the Information and Environmental Policies. Therefore we include some key demands relating to the release of a project's Environment Information.

Releasing Environmental Impacts Assessments prior the Board Approval

The EIB should adopt a clear policy that articulates the release of EIA and other project-related environmental and social documentation prior to Board Approval of a project. The current practice, together with policies which allow the release documents and the start of public consultations to occur after Board Approval, creates a perverse incentive to ignore the results of EIA and consultative processes as the funding is already approved. As such the EIA process becomes meaningless.

All relevant documents, including draft EIA report should be made public 60 days prior public consultations, both in English and in locally appropriate language(s), which are easily accessible to all stakeholders.

The release of a project's EIA, including results of public participation, should be mandatory before approval by the EIB Board.

Transparency of Bank internal processes

The EIB should follow the *best* practice of other International Financial Institutions and increase the transparency of its procedures and internal evaluations. For that as a first step full Bank's Staff Directory with information on staff responsibilities and contact should be released.

The EIB should provide the public with Board documents, such as the Board's work plan, monthly calendars and agendas of Board's meetings, summaries of all lending and policy discussions within the Board of Directors, and documents discussed at the meetings.

The EIB should start to release information related to the implementation of projects, including global loans, to start with mid-term project evaluations and final evaluations of project sustainability.

The EIB should release evaluation materials related to lending operations, comparable to that of other financial institutions. Recently, the World Bank has committed itself to disclosing all "Implementation Completion Reports" and "Project Performance Audit Reports" following project completion. The Asian Development Bank also releases its "Project Completion Reports."

5. ARHUS CONVENTION AND WB PROVISIONS FOR ACCESS TO INFORMATION AND THE RIGHT TO PARTICIPATION AND JUSTICE IN ENVIRONMENTAL MATTERS

General observations

Perhaps the biggest difference between Aarhus and WB policies is that Aarhus is much more enforceable: because of the nature of the parties that sign-on to Aarhus (which are sovereign states with laws and courts) and also because of its language. Look at the title of the convention for instance: "*justice* in environmental matters." You will not find the word "justice" in the Bank's policies. Nor will you find the word "right" in many of the Bank's policies. Where Aarhus is much more rights-based.

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The WB does not have a participation policy, although some participation requirements are outlined in its safeguard policies. [Also see *Instructions to Staff on the Handling of the Borrower's Consultations with Affected Groups and Relevant Local NGOs*, 4/10/90.]

Overall, the Aarhus requirements are stronger than the requirements that the Bank has – this is only because the Bank's policies are not very enforceable and Aarhus has more “citizens' rights” and “justice” language – not to mention a court that will try violations of the policy. The World Bank has no such court.

Process Guarantees

Aarhus specifically defines some process guarantees (or process requirements) for the disclosure of information where the World Bank's disclosure policy does not.

- ARHUS: “in response to a request for environmental information, [public authorities] make such information available to the public, ... (a) without an interest having to be stated; (b) in the form of the request. [Article 4, paragraph 1]
“The environmental information shall be made available ... as soon as possible and at the latest within one month after the request has been submitted ... unless ... an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.” [Article 4, paragraph 2]

In addition to the Disclosure Policy, the World Bank has a staff *Handbook* on disclosure of information. This *Handbook* outlines the processes which staff should follow to disclose information (e.g. a PID is sent to the InfoShop 5 days after PCD review). However, the *Handbook* is not an enforceable document because it is not officially Bank policy.

The process guarantees stated in Aarhus are good, but do not go far enough. For instance, Aarhus also makes some very vague and broad statements related to the “early” disclosure of information. [see Article 6, paragraphs 2 and 3]

Public Interest in Disclosure and a Presumption in favor of disclosure

Aarhus and WB disclosure policy are very similar, but so far the WB has not effectively operationalized a meaningful interpretation of the “presumption.”

- ARHUS: The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the *public interest served by disclosure*.” [Article 4, paragraph 4]
- WB: It follows that there is a *presumption in favor of disclosure*, subject to the provisions of this statement.

Both of these statements can essentially mean the same thing. However, the WB is interpreting the “presumption in favor of disclosure” in a very restrictive way. According to Bank officials, the “presumption” only applies to the documents already listed in the Policy, not to documents that fall outside of the policy. Therefore, only documents listed in the Bank's disclosure policy are disclosed.

Constraints to disclosure

Both the Aarhus and the WB list a number of constraints to disclosure. [ARHUS, Article 4, paragraph 3] [WB Disclosure Policy, Part IV.] The constraints in these documents are not narrowly defined and, therefore, are left to broad interpretation. The constraints listed in the WB's policy could apply to almost any document that the Bank (or project sponsor) produces – including environmental information.

Alternative options

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Both Aarhus and the World Bank make a provision for an alternative option.

- ARHUS: “The relevant information shall include at least, and without prejudice to the provisions of article 4: ... (e) An outline of the main alternatives studied by the applicant.” [Article 6, paragraph 6 (e)]
- WORLD BANK: “EA for a Category A project examines the project's potential negative and positive environmental impacts, compares them with those of feasible alternatives (including the "without project" situation), and recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance.” [OP 4.01, 1999]

Right to non-persecution

The World Bank makes no provision for this in any of their policies related to disclosure, participation or environment. (I'm 90% sure of this.)

- ARHUS: “persons exercising their rights ... shall not be penalized, persecuted or harassed in any way for their involvement.”

General NGO concerns about participation at the World Bank

As already stated, the World Bank does not have a discrete policy on participation including: when it is always required and how to conduct a consultation. This is a huge gap in the Bank's stated objectives for “participatory development.”

With the consultations that the Bank has had, there are several general concerns:

- Those being consulted do not receive information in a timely manner in order to develop thorough and thoughtful comments and questions before the consultation.
- Consultations (and information disclosure) often times come too late, after the majority of decisions have already been made on a project or policy.
- There are no consultation requirements for structural adjustment lending.
- Consultations are not culturally or politically sensitive or sensitive to the community (e.g. using medium that the community is not use to; mixing a variety of stakeholders in one consultation)

Trends towards greater disclosure and enhanced participation at the World Bank:

- The World Bank is in the process of developing an online document “catalogue.” This catalogue will list all the information produced by the World Bank (or project sponsor?) on any aspect of the Bank's operations. The catalogue is searchable by a variety of indicators and provides the name, acronym, definition and disclosure status of a particular document.
- The World Bank is moving towards disclosing final draft Board documents (documents that go to the Board like CASs, PADs, Ops, and PRSPs) to the public when they are circulated to the Board (normally 2-weeks before the Board discussion). Although discussions about this policy revision are still underway, the Bank could begin disclosing final drafts as early as August 2004 on a pilot basis for one year.
This is important because once people are consulted on a document, it makes sense for them to also see the final document before it is approved. It also gives citizens an opportunity to communicate directly with their Executive Director about a document.
- Transparency is not only about disclosure, but also about access to information, including access to documents in a language that you can understand. The World Bank has begun to address these issues in

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two papers: *Strengthening Public Information Centers* and *A Document Translation Framework*. (both developed August 2003).

6. APPENDIX

List of Multilateral Development Banks operating in UN ECE Region.

- **European Investment Bank (EIB)**
- **European Bank of Reconstruction and Development (EBRD)**
- **World Bank Group**
 - **International Bank for Reconstruction and Development (IBRD)**
 - **International Development Association**
 - **International Finance Corporation (IFC)**
 - **Multilateral Investment Guarantee Agency (MIGA)**
- **Asian Development Bank**
- **Nordic Environment Finance Corporation**
- **Nordic Investment Bank**
- **Black Sea Trade & Development Bank**
- **Council of Europe Development Bank**