

## Transparency and independency at the EIB, an assessment

### INTRODUCTION

On 6 March 2015 the European Investment Bank (EIB) adopted its latest transparency policy, replacing the previous one of 2010. Several points were supposed to be reformed. The overall outcome is, however, just partially convincing. The present paper will take into account and evaluate two specific aspects of the current EIB Transparency Policy: **the access to documents** and **the independency** of the bank as for the investment decisions. As far as the former is concerned, a comparison between the implementation of the previous policy in 2014 and that of the current one in 2015 will also be carried out. As regards the independency of the EIB’s investment decisions, the assessment will be based upon the composition of the bank’s capital stock and the different weight of its shareholders. This will lead us to slightly diverging conclusions as for the level of transparency concerning the two aforementioned aspects.

### 1. ASSESSING TRANSPARENCY

Policy and actions of the EIB have to respect the accountability and the transparency principles stated in article 15 of the TFUE : *“Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents”*.<sup>1</sup>

A second criteria used to assess the transparency of the EIB is related to the disclosure of information. The disclosure and the consultation of information and documents about projects is a vital component in the evaluation of accountability and transparency of a financial institution. The more the people can have access to these files through different instruments, the more the institutions can be considered transparent. For the purpose of this report, it is possible to identify two sub-principles: the right of access to information and the right to request information.

#### 1.1 The transparency policy of the EIB

In order to comply with this rule, the EIB **publishes and updates information and documents** in its website and makes public *“project summaries of all investment projects at least 3 weeks before the project is considered for approval by the EIB’s Board of Directors”*.<sup>2</sup> However, there are two shortcomings. The first is related to the translation of documents in different languages. The majority of them are indeed provided only in three languages: English, French and German. This limited

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<sup>1</sup> Consolidated version of the Treaty on the Functioning of the European Union, in <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>.

<sup>2</sup> European Investment Bank Group, Transparency Policy, 6 March 2015.

number of translations could have repercussions on the access to information concerning projects and investments, which is often unavailable in the languages of the countries concerned. The second problem is related to the faculty of the bank to decide which documents and information can be disclosed.

The transparency policy of the EIB is based on the **principle of non-discrimination and presumption of disclosure**, which implies that “*all information and documents held by the Bank are subject to disclosure upon request*”<sup>3</sup>, and non-discrimination. However, there is a **limit to this last principle**. In fact, there are some cases in which the bank can refuse the disclosure of a document if that could “*undermine the public interest, privacy and the integrity of the individual, commercial interests of a natural or legal person, intellectual property, the purpose of inspections, investigations and audits, court proceedings and legal advice*”.<sup>4</sup>

The way in which the EIB complies with the **right to request information** is explained in the EIB Transparency Policy 2015, from Article 5.16 to Article 5.34. There it is stated that the applicant, after having sent the request, will receive an answer by 15 working days after the reception or 30 working days in case of complex replies. Moreover, if due to confidentiality reasons, the EIB is unable to provide, in full or partially, the information requested, the applicant, within 15 working days, can make a confirmatory application in order to ask the Bank to reconsider its position. Furthermore, point 5.31 emphasizes the possibility for the applicant to complain through the Complaints Mechanism within one year of the EIB’s response, in case of a failure by the Bank to reply.<sup>5</sup>

## **1.2 Comparison between the implementation of the EIB’S Transparency Policy in 2014 and 2015**

According to the Report on the implementation of the EIB Group Transparency Policy in 2015, the requests processed by the InfoDesk were 4876 against 4863 of 2014. Both in 2015 and in 2014, the majority of the requests were related to financing instrument, some 44.85% and 45.05% respectively<sup>6</sup>, while the second largest proportion was about general questions about the EIB. Some 94% of the 4876 requests processed in 2015 was managed within the 15 working days, while for 5% of them the process took maximum 30 working days. In 2014, the proportions were slightly different: 95% and 3.4% respectively. In both cases, 1% represents the proportion of requests which needed more than 30 working days.

As regards the disclosure of information, there has been an increase in the number of requests received: in 2014 they were almost the half of those received in 2015, 24 against 42. However, if in 2014 they were related more with “disbursement details of loans, environmental and social impact assessments, specific emission assessments, and monitoring and completion reports of EIB financed

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<sup>3</sup> European Investment Bank Group, Transparency Policy, Art. 5.1, 6 March 2015.

<sup>4</sup> European Investment Bank Group, Transparency Policy, Art. 5.4, 6 March 2015.

<sup>5</sup> European Investment Bank Group, Transparency Policy, 6 March 2015.

<sup>6</sup> Report on the implementation of the EIB Group Transparency Policy in 2014, [http://www.eib.org/attachments/documents/report\\_on\\_the\\_implementation\\_of\\_the\\_eibs\\_transparency\\_policy\\_in\\_2014\\_en.pdf](http://www.eib.org/attachments/documents/report_on_the_implementation_of_the_eibs_transparency_policy_in_2014_en.pdf).

projects”<sup>7</sup>, in 2015 the requests were more focused on “environment and social impact assessment, specific emission assessments, project assessment documentation”<sup>8</sup>. The process for 43% of the 42 requests in 2015 ended within 15 working days, while for the 33% it took up to 30 working days. On the contrary, the percentage for 2014 are 70% and 20%, respectively.

Finally, while in 2014 the EIB Complaint Mechanism handled a complaint, in 2015 it did not receive any complaints.

### 1.3 Considerations, “lights and shadows”

The analysis shows that while on the one hand the transparency policy of the Bank is in line with the EU regulation, on the other it also puts in evidence some weaknesses of this policy. Firstly, documents, especially those related to projects, are only translated in three official languages of the countries where the Bank invests. Secondly, even though there is the possibility not to disclose documents which undermine particular interests - as stated in point 5.4 and 5.5 of the EIB Transparency Policy 2015 - it seems that the Bank excessively uses its discretionary power. Finally, it is necessary also to take into consideration that the Bank is the only institution that is able to disclose documents. Although the EIB is obliged to disclose documents and information when there is an overriding public interest<sup>9</sup>, however, it is difficult to establish the existence of the latter. Moreover, the burden of proof generally lies on the applicant, but this has also been contested.

From the comparison of the implementation policy of 2014 and 2015, it is possible to conclude that even though they apply two different transparency policies (that one of 2010 and 2015), the results are quite similar and it is not possible to argue that there has been a big improvement. However, in order to assess the efficiency and the performance of a policy, time is needed and probably in the next years a better evaluation would be possible.

## 2. ASSESSING INDEPENDENCY

The EIB is an independent body which fulfils its functions according to the TFEU and its statute. The purpose of the EIB is to promote **social cohesion** and convergence among MS. Especially, promoting investment projects to less developed regions is a specific task.<sup>10</sup> To achieve this task, no geographical or sectoral quota to financing operations is applied.<sup>11</sup>

In this section, we want to assess the “**independency**” of the EIB. In order to evaluate that, we are going to compare the capital subscribed by the shareholders (the 28 MS) with the amount of investments pursued in the MS. If a strong correlation between shareholders and recipient is detected, one can argue that some MS have more weight than others in the decision-making process. In this sense, a principle of “**just return**” would lie behind the functioning of the EIB, undermining its

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<sup>7</sup> Report on the implementation of the EIB Group Transparency Policy in 2014, [http://www.eib.org/attachments/documents/report\\_on\\_the\\_implementation\\_of\\_the\\_eibs\\_transparency\\_policy\\_in\\_2014\\_en.pdf](http://www.eib.org/attachments/documents/report_on_the_implementation_of_the_eibs_transparency_policy_in_2014_en.pdf)

<sup>8</sup> Report on the implementation of the EIB Group Transparency Policy in 2015.

<sup>9</sup> Article 4(2) Regulation 1049/2001.

<sup>10</sup> Consolidated version of the Treaty on the Functioning of the European Union, art. 309, in <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>

<sup>11</sup> EIB website, retrieved on 6<sup>th</sup> June 2016, <http://www.eib.org/about/structure/shareholders/index.htm>

independency and, in turn, its capacity to fulfil its task. Before addressing that, we will start by describing the decision-making process.

## 2.1 How investment decisions are taken

As aforementioned, the shareholders of the EIB are the EU member states which seat in the decision-making bodies. Decisions are taken by three main bodies:

- the Board of Governors, aimed at adopting general guidelines and annual account,
- the Board of Directors, which approves financing operations and policies,
- and the Management Committee, with implementing and executive tasks.

While the first two have an intergovernmental structure, i.e. composed by MS representatives, the latter is the only permanent, i.e. supranational body. For the aim of this report, we focus on the Board of Directors, since it decides and approves the investment operations of the EIB.

The **Board of Directors** is composed by 29 Directors, appointed by each MS and one by the Commission. While decisions are usually taken by consensus, they are formally taken by a “*majority consisting of at least one third of members entitled to vote and representing at least 50% of the subscribed capital*”.<sup>12</sup> As we can see, MS with a higher share have more weight in the decision-making process which can adversely affect the “independency” of the EIB.

## 2.2 Is there a geographical correlation between shareholders and recipient MS?

While the EIB operates in several regions in the world, the 90% of investments are conducted in the EU. To finance its operations, the EIB can borrow money on the capital market or make use of its own capital. According to its statute, the capital of the EIB is about EUR 243 billion, subscribed by the MS. On the basis of its economic weight, each MS subscribes a different share. As you can see from the figure below, **Germany, France, Italy and United Kingdom** are the **main shareholders**, sharing equally around 39 billion each, immediately followed by **Spain**.<sup>13</sup>

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<sup>12</sup> EIB website, retrieved on 6<sup>th</sup> June 2016,

[http://www.eib.org/about/structure/governance/board\\_of\\_directors/index.htm](http://www.eib.org/about/structure/governance/board_of_directors/index.htm)

<sup>13</sup> EIB statute, art. 4, 2013, p. 8.

## Breakdown of the EIB's capital since 1 July 2013

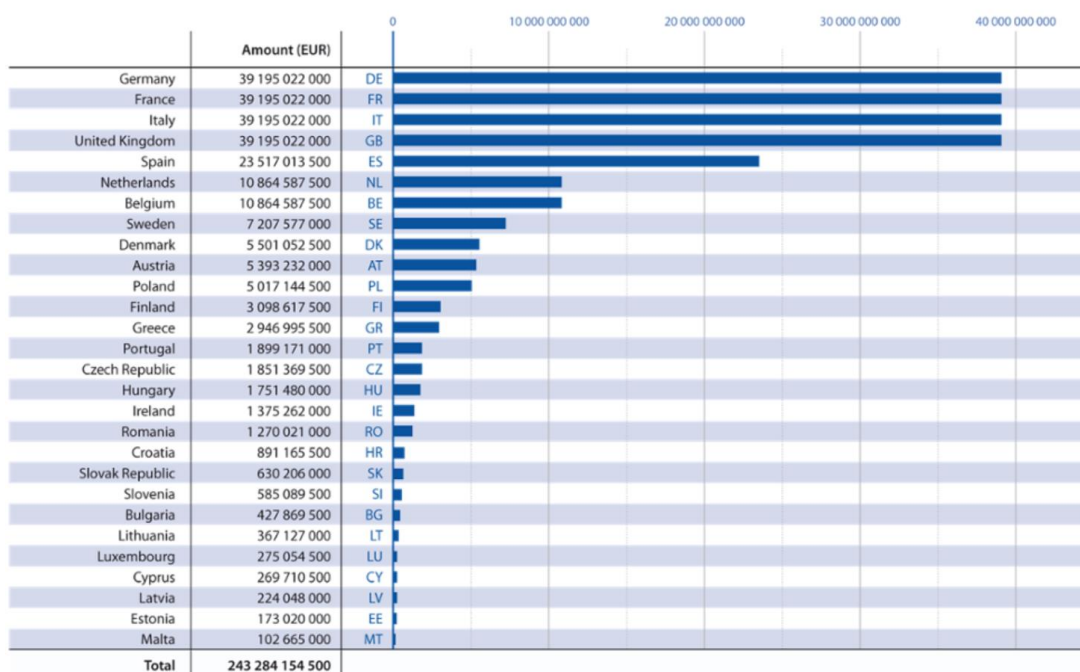


Figure 1 - Shareholders

By comparing the shares with the amount of investments, we found a striking **geographical correlation**. Indeed, the first five shareholders are also the first five recipient countries. As follows, you can find the ranking of the main recipients:

1. **Spain**. EUR 11.9 invested in 2015 and EUR 51.7 over the past five years (2011-2015).
2. **Italy**. EUR 10.9 in 2015 and EUR 47.3 over the past five years (2011-2015).
3. **Germany**. EUR 6.7 in 2015 and EUR 33.1 over the past five years (2011-2015).
4. **France**. EUR 7.9 in 2015 and EUR 30.2 over the past five years (2011-2015).
5. **United Kingdom**. EUR 7.8 in 2015 and EUR 29.1 over the past five years (2011-2015).<sup>14</sup>

Although a geographical scope is denied, from this analysis a geographical correlation between shareholders and recipients is perceived.

### 2.3 Considerations, need to reform.

According to our analysis, the financing operations of the EIB seems to be guided by a principle of just return. Indeed, the first main shareholders correspond with the first main recipients, in different order though. In other words, a geographical scope is the tenet which defines the allocation of the resources.

This outcome might be provoked by the decision-making process concerning financing operations. Indeed, on the basis of the majority rule votes are weighted according to the different size of the shareholders. As a consequence, big MS seem to be able to influence the investments choices of the EIB, affecting its independency. In turn, the capacity of the EIB to promote social cohesion, as stated in the Treaty, could be adversely affected.

<sup>14</sup> EIB website, retrieved on 6<sup>th</sup> June 2016, <http://www.eib.org/projects/regions/european-union/index.htm>.

## CONCLUSION AND PROPOSALS

As we have seen, the current Transparency Policy of the EIB shows that much still has to be improved. Moreover, a comparison between the implementation of the previous policy in 2014 and that of the current one in 2015 gives evidence that little has changed, as far as access to documents and the EIB's Complaint Mechanism are concerned. As regards the latter, its functioning needs to be improved, given the poor implementation of its decisions and a lack of information on how to access it, which also depends on the fact that information is only given in the working languages of the European institutions. A different conclusion is to be taken as regards the access to documents. Of course, the restricted number of languages in which information can be disclosed is a serious limitation to the access to documents and, therefore, further steps need to be taken in order to allow disclosure in all the 24 languages of the EU, plus in those of the third countries where the investments take place.

This should not be such a big deal, since some information is already provided in 24 languages by the EIB. However, as for the amount of documents disclosed by the EIB, which according to the critics is still too little, the provision in the EIB's Transparency Policy of exceptions to the principle of presumption of disclosure is in line with the Regulation 1049/2001. The problem lays in the extent of the EIB's discretionary power. However, this does not entirely depend on the goodwill of the EIB, but also on that of its clients.

Therefore, the current Transparency Policy is acceptable from a formal point of view; what needs to be changed is its implementation, which however, as it is the case with all political decisions, requires gradual improvements. Imposing more stringent conducts in the short-term could lead to the circumvention of the obligations via decisions which are only apparently complying with them.

Moreover, it is often hard to distinguish whether or not there is an overriding public interest that obliges the EIB to disclose relevant documents. A recent decision of the European Ombudsman in the Mopani Coppermine case suggests that the EIB should better comply with the principle of disclosure, at least by providing short summaries concerning its decision process and the implementation of its contract. However, it is too soon to make a precise assessment of the implementation of the current policy, which could prove to be better than expected as for the access to documents.

As far as the independency of investment decisions is concerned, our evaluation is instead negative. The biggest shareholders have a decisive influence on the decision process, which reflects their participation to the capital stock of the EIB. If, on the one hand, this is inevitable, on the other hand an independent institution such as the EIB should be put in the condition not to be influenced by its shareholders.

A reform of the existing rules would require a political will. Whereas a reform of the Treaties, which aims at imposing the respect of independency requirements, would be very hard to bring about, a new voting system would be easier to achieve. To this extent, we propose to follow the current voting procedure of the ECB. This means to increase the power of the Management Committee, by giving to its members the voting rights concerning financial operations. Furthermore, it would imply firstly

to distinguish between the group of the bigger shareholders and the group of the smaller shareholders. Secondly, to attribute to both a separate rotating voting system.

The advantage of this reform will be twofold. On the one hand, the Management Committee would obtain more space of manoeuvre to preserve the independency of the Bank. As a result, the task of the EIB, i.e. to promote social cohesion, would be more likely to be achieved. On the other hand, it would downsize the excessive power of bigger MS and, at the same time, maintaining an equal balance between bigger and small shareholders.

This does not exclude the possibility to adopt a more radical system in the long term.