



BRIEFING NOTE ON THE EBRD PUBLIC INFORMATION POLICY: IMPLEMENTING PROCEDURAL PROVISIONS FOR INFORMATION REQUESTS AND APPEALS

Global Transparency Initiative
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This Briefing Note sets out the views of the Global Transparency Initiative (GTI) on the European Bank for Reconstruction and Development's (EBRD) Public Information Policy: Implementing Procedural Provisions for Information Requests and Appeals (Implementing Provisions), released for public comment on 6 November 2006. Section 6.1 of the EBRD's Public Information Policy (PIP), adopted in May 2006, requires the Secretary General of the EBRD to issue these Implementing Provisions.

The two-page Implementing Provisions set out the procedure by which requests for information may be lodged and shall be processed, and outline the system of appeals for requesters who are not satisfied with the manner in which their request for information has been dealt with in the first instance.

The GTI welcomes the commitment, in the May PIP, to issue these Implementing Provisions, and the fact that the EBRD has moved with some dispatch to prepare them. The Provisions have a number of positive features, including accepting requests and appeals in official national languages of countries of operation (paras. 2(ii) and 3(ii)); rapid acknowledgement of requests (paras. 2(iii) and 3(iii)); and being guided by the presumption of disclosure in assessing appeals, although this is undermined by reference to the need for confidentiality (para. 3(v)). Notwithstanding these positive features, we have a number of concerns with the Implementing Provisions, which are set out below.

At the same time, we would like to reiterate two key points in our submission to the EBRD of 14 April 2006, as input to its review of its PIP, which have still not been addressed.

First, the regime of exceptions, set out in section 7 and Box 2 of the PIP, and justified in section 9 and Box 4, remains significantly overbroad. Most of the exceptions – including those relating to internal documents, Board documents, information

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provided by third parties, information relating to procurement processes, information relating to deliberative processes and business information of private entities – are not subject to a harm test. The Policy adopts an originator control approach, whereby those who provide information have an effective veto over its disclosure. This is at odds with the practice under national access to information laws, and directly contradicts the GTI's Transparency Charter for International Financial Institutions (Charter) (see Principle 5). Furthermore, the PIP provides at best for a very limited public interest override, whereby information is made public where this is in the overall public interest, again notwithstanding provision for this in the Charter and most national access to information laws.

Second, the EBRD has yet to develop a robust “positive list” of documents which should be routinely disclosed through the Bank's website and other dissemination mechanisms. While the draft Implementing Provisions are an important step towards a more accountable request-driven information disclosure system, the timely disclosure of a range of institutional and project information is also critical to EBRD transparency.

During the 2006 PIP review, the GTI made several recommendations regarding proactive disclosure of Bank institutional and operational information, in final and draft form, in line with Charter Principles 2 (Automatic Disclosure) and 3 (Access to Decision-Making). Among other things, the GTI recommends the routine disclosure of:

- initial discussion papers at the time such documents are produced, including the Concept Review Memorandum (CRM), Environmental Screening Memorandum, draft Environmental Summaries (ES) and Initial Environmental Examinations;
- draft Board reports for private and public sector operations upon their circulation to the Board and in final reports following Board approval; and
- monitoring and implementation reports prepared by the Project Sponsors throughout the life of the project.

We understand that the EBRD intends to conduct a fully consultative review of its PIP and Environmental Policy in 2007, as indicated by the Bank's Secretary General in a meeting with civil society on 28 November 2006. We welcome this development and look forward to making progress on the concerns noted above, among others.

Comments on Procedural Provisions

The GTI has a number of specific concerns with and suggestions relating to the Implementing Provisions inasmuch as they establish procedures for processing requests for information. This part of the Briefing Note draws on Principle 4 of the Charter, The Right to Request Information.

First, the Provisions stipulate that, where requests or appeals are not sufficiently precise, the applicant may be asked for clarification (paras. 2(iv) and 3(iv)). In such cases, the EBRD should commit itself to providing assistance to requesters to help them formulate more precise requests. Such a commitment is common in national access to information legislation, is called for in the Charter, and is appropriate given the difficulty faced by requesters who are not familiar with the information systems of the EBRD.

Drafting Suggestion for para. 2(iv):

“If a request is not sufficiently precise to identify the document or information sought, the Bank will provide reasonable assistance to requesters to clarify the request.”

Second, requesters should have the option of stipulating the form in which they would like to receive information. For those with ready access to a computer, provision of electronic information will normally be preferred but other interests should also be accommodated. This is not addressed in the draft Implementing Provisions.

Drafting Suggestion for an additional para.:

“Where a requester has stipulated a particular form of communication of the information sought, the Bank will make reasonable efforts to satisfy the request in this form.”

Third, the Implementing Provisions should be clarified in relation to the lodging of requests. At present, para. 2(i) provides, somewhat confusingly, that requests ‘must’ be received via a central information contact point and also that, ‘alternatively’ they may be sent to the Bank’s Resident Offices. It should be made clear that it is up to requesters to decide where they would like file requests, whether through the central contact point, resident offices or other EBRD departments. To this end, we reiterate the recommendation we made during the 2006 PIP review that contact information, at least for key staff from all departments, should be made publicly available. Finally, it should be made clear that mailed or faxed requests do not need to be made on the form provided on the Bank’s website (which may not be available to all requesters).

Drafting Suggestion for para. 2(i):

“Requests for information may be made by Email in the form set out on the Bank’s website at info@ebrd.com or to relevant Bank officers. Requests may also be made by fax or regular mail to the Bank’s Communications Department (fax: +44 207 338 6102; address: 1 Exchange Square, London, EC2A 2JN, United Kingdom) or to one of the Bank’s Resident Offices.”

Fourth, the Charter calls for the publication, including over the Internet, of a register listing “the key documents and other records” held by IFIs. This facilitates requesters’ ability to formulate their requests for information accurately and precisely. Neither the Implementing Provisions nor the PIP itself provide for such a register.

Drafting Suggestion for an additional para.:

“The Bank will publish and update at least annually a register listing the key documents and records it holds.”

Fifth, the Implementing Provisions provide for a response by the Bank to requests within 20 days, which may be extended for a further 20 days. The Charter suggests that the initial period should be no longer than 15 days. If the Bank maintains its records in good order, it should rarely take longer than 15 days to process requests and this will be covered by the exceptional possibility of extending the response period.

Sixth, although the Implementing Provisions, as noted above, provide for the receipt of requests in national languages, they do not address the question of the language of responding to requests. The Charter provides:

Where reasonably possible, information should be provided in the language requested and translation should always be provided where this is in the public interest, for example because the information is of interest to a whole community.

Drafting Suggestion for an additional para.:

“Where a requester specifies a language preference, the Bank will comply if it holds the documents or information requested in that language. Within reasonable limits, and where this is in the public interest, the Bank will also translate information for purposes of satisfying a request in the language specified.”

Comments on Appeals

The Implementing Provisions provide for an internal appeal and, specifically, at para. 3(v), for the Secretary General to decide upon appeals, “assisted as necessary by the General Counsel and Members of the Executive Committee”. It would be preferable to remove the provision for assistance only ‘as necessary’ from the General Counsel and Members of the Executive Committee. This will both give some confidence to requesters that their appeal is being dealt with seriously and by more than one person, and also add credibility to the process. The Asian Development Bank, for example, provides for a Public Disclosure Advisory Committee to perform this function, consisting of the Managing Director General, the Principal Director of the Office of External Relations, the Secretary and the General Counsel (see section VI(A)(6), para. 151 of their Public Communications Policy).

Importantly, neither the Implementing Provisions nor the PIP itself provide for an independent level of appeal. This is key to proper implementation of the PIP (see Charter Principle 6). Both the PIP and the Implementing Provisions recognise the possibility of an appeal to the Independent Recourse Mechanism (IRM) based on a failure to disclose information (see, respectively, section 6.5 and para. 3(v)). The IRM is a quasi-independent body but appeals to this body are limited to those who have, due to a failure to apply a policy, been adversely affected by a Bank-financed project. While valuable, this is, as the GTI pointed out in its April 2006 Submission, inadequate in the context of information appeals, which should be available to everyone. Furthermore, the procedures of the IRM are quite unsuited to information appeals, which should proceed rapidly and with a minimum of procedural complication.

Comments on Reporting

Pursuant to para. 4 of the Implementing Provisions, the Bank will include information on its handling of requests in its annual report on the PIP. While this is welcome, it would be preferable if the Implementing Provisions provided a bit more detail as to what exactly such reporting will include. They should, for example, specify that the reporting will detail such matters as the number of requests for information received, granted in full or in part, and refused; how often and which sections of the policy were relied upon to refuse, in part or in full, requests for information; the number of appeals from refusals to grant requests and their outcome.

Recommendations

- The EBRD should be required to provide assistance to requesters who are having problems formulating their requests.
- Requesters should be able to stipulate the form in which they would like their requests to be satisfied.
- It should be clear that it is up to requesters to choose where to lodge their request and the EBRD should publish a staff directory to facilitate this
- Non-electronic requests should not be required to be on the form provided by the Bank.
- The EBRD should publish a register of the key documents and records it holds.
- The time limit for responding to requests should be reduced to 15 days, extendable by a maximum of 15 further days.
- Responses to requests should be in the language requested whenever possible and a translation should be provided for public interest requests.
- The Secretary General should be required to consult other parties when considering internal appeals.
- Provision should be made for an independent level of appeal.
- More detail should be provided as to what will be included in the annual reports on handling of requests.

For more information, and for any questions regarding these comments, please contact:

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The Global Transparency Initiative (GTI) is a network of civil society organisations promoting openness in the International Financial Institutions (IFIs), such as the World Bank, the International Monetary Fund, the European Investment Bank and Regional Development Banks. The GTI believes the people have a right to information from public institutions and a right to participate in the development policies and projects that affect their lives. The GTI aims to strengthen IFIs' accountability to the public interest and to expand political space to debate development models.

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