



## EIF Transparency Policy

1 February 2016



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# 1. BACKGROUND and PURPOSE

- 1.1. The European Investment Fund (EIF) is a European financial institution, specialised in providing risk finance, such as venture and growth capital and guarantees and other types of financial instruments with a view to contributing to the pursuit of European Union objectives<sup>1</sup>, in particular to promote innovation and entrepreneurship, growth and employment. The EIF's support is primarily aimed at Small and Medium Sized Enterprises (SMEs). In principle, EIF conducts its activity within the European Union, in countries which are candidates and potential candidates to the European Union, and in EFTA countries. The majority shareholder of the EIF is the European Investment Bank (EIB); together with the EIB, the EIF forms the EIB Group. The EIF, as a European Union body, is conscious that transparency strengthens its credibility and its accountability and thus delivers business value. Transparency also contributes to increasing the efficiency and sustainability of the EIF's operations, reducing risks, and enhancing relations with its stakeholders.
- 1.2. The present document sets out the European Investment Fund's (EIF) implementation framework to transparency and stakeholder engagement. It adheres to the policy framework of the EIB Group, notably the European Investment Bank (EIB) Group Transparency Policy (as referred to in paragraph 3.1 of the EIB Group Transparency Policy) which has been adopted on 6 March 2015.
- 1.3. Through the EIB Group policy framework, the EIF Transparency Policy also enters into the framework on public transparency determined, in particular, by the Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents and the Aarhus Convention as implemented in Regulation (EC) No. 1367/2006 on the application of the provision of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. EIF continuously considers the development of the EIB Group and EU policy framework on transparency and public access to information.
- 1.4. This Policy shall enter into effect as of 1 February 2016 replacing the relevant pre-existing EIF Transparency Policy.

## 2. GUIDING PRINCIPLES

2.1. The EIB Group Transparency Policy sets out the following guiding principles:

- **Openness and the highest possible level of transparency**, with the underlying presumption that information concerning the EIB Group's operational and institutional activities will be made available to third parties (the public) unless such information is subject to a defined exception ("presumption of disclosure"), based on the principle of non-discrimination and equal treatment and in line with the EU, EU Member States' and other relevant third countries' relevant legislation and with internationally accepted principles;

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<sup>1</sup> cf. Article 2/1 of EIF Statutes.

- **Ensuring trust and safeguarding sensitive information of third parties**, which underlines the need to balance the presumption of transparency against the confidential treatment of sensitive information with a view to maintaining the confidence and trust of business partners, investors and third parties;
- **Willingness to listen and engage with third parties**, which contains the commitment to actively encourage stakeholder input to the policies issued and practices implemented by the EIB Group and to engage in an open, constructive dialogue with all stakeholders.

### 3. THE INSTITUTIONAL FRAMEWORK

- 3.1 The EIF was established in 1994 by the Board of Governors of the EIB, on the basis of article 30 of the Statute of the EIB, as an entity with legal personality and financial autonomy. Its capital is held by the EIB, by the European Union and national private and public financial institutions. The General Meeting of shareholders appoints the members of the Board of Directors and the members of the Audit Board, the statutory audit body of EIF. The executive management of EIF consists of the Chief Executive, who may be assisted by a Deputy Chief Executive.
- 3.2 EIF ensures that its activities respect EU policies and laws or, where these are not applicable, uses EU policies and laws as the best reference. In its day-to-day operations, the EIF takes into account standards and practices applied by the financial community, particularly in areas not covered directly by EU law.
- 3.3 Improving the transparency of its institutions and bodies is a key European Union objective aimed at bringing them closer to the public they serve, as well as highlighting their relevance in contributing to Europe's social and economic cohesion and sustainable development.
- 3.4 This Policy is consistent with the legal obligations of EIF in respect of the principle of openness and the right of public access to documents. Paragraphs 3.5-3.7 below set out, in a non-technical way, the EIF's understanding of the relationship between the Policy and its legal obligations.
- 3.5 The principle of openness is enshrined in Article 1 of the Treaty on European Union (TEU) which states that the Treaty marks a new stage in the process of creating an ever closer Union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizens. Openness also contributes to the strengthening of the principles of democracy and respect for fundamental rights, in line with Article 6 TEU. Article 15(1) of the Treaty on the Functioning of the European Union (TFEU) requires Union institutions, bodies, offices, agencies, including the EIF, to conduct their work as openly as possible in order to promote good governance and ensure the participation of civil society.
- 3.6 Article 15(3) TFEU provides for the right of public access to documents. This is a fundamental right, recognised by Article 42 of the Charter of Fundamental Rights of the European Union. General principles and limits governing this right are to be determined by the European Parliament and the Council of the European Union through legislation. The legislation currently in force is Regulation (EC) No. 1049/2001.
- 3.7 In line with paragraph 3.8 of the EIB Group Transparency Policy, EIF strives at implementing, through this Policy, the principles expressed in Article 15(3) TFEU in a way consistent with the principles of openness, good governance and participation while

determining how the general principles and limits governing the right of public access should apply in relation to its specific functions as a financial institution.

#### 4. PUBLICATION OF INFORMATION

##### *Principles for publication of information*

- 4.1. In order to support and promote the principle of transparency, the EIF is committed to regularly publish and update information regarding its role, policies and operations in a timely fashion.

The EIF routinely publishes a broad set of documents, including, e.g.:

- Institutional information;
- Policies and strategies;
- Information on financial intermediaries and, where relevant, the selection processes of financial intermediaries;
- Procurement information and tender notices for EIF's own account;
- Accountability and governance related information.

A non-exhaustive list with links to key EIF documents and information is published and regularly updated on the EIF website<sup>2</sup>.

- 4.2. The EIF website ([www.eif.org](http://www.eif.org)) is the main channel for disseminating information on EIF's activities broadly. In addition, EIF may also disseminate information to the public by other means, such as hard copy publications and information documents, press releases, presentations at conferences, seminars and via other channels.
- 4.3. The language of communication with the public is English. Translation into other languages can be considered at EIF's discretion. EIF's Statutes are published in the Official Journal of the European Union.
- 4.4. Within the limits imposed by applicable laws and regulations, the final determination as to what information may be released to the public shall rest with EIF, which shall also decide which documents to publish, in which format and via which channels the dissemination will occur.

##### *Information on transactions*

- 4.5. On its website, EIF provides a comprehensive overview on its business activities, products and mandates. Where relevant, this includes calls for the expression of interest for a transparent and competitive selection of financial intermediaries.
- 4.6. A list of transaction counterparts is posted on EIF's website for each country of EIF's activities<sup>3</sup>.

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<sup>2</sup> <http://www.eif.org/index.htm>

<sup>3</sup> [http://www.eif.org/what\\_we\\_do/where/index.htm](http://www.eif.org/what_we_do/where/index.htm) - « Where to access finance – EIF financial intermediaries »

## *Financial Information*

- 4.7. The EIF publishes audited financial statements on an annual basis which are included in the EIF Annual Report. EIF applies International Financial Reporting Standards (IFRS) with extended notes to the Balance Sheet and to the Profit and Loss Account Statement as well as to the Independent Auditors Report and to the Audit Board Report. This is a fundamental element of transparency and is recognised as an expression of best practice in corporate governance. With the same objective, relevant European legislation is applied to EIF's financial statements.

## 5. DISCLOSURE OF INFORMATION

### *Principles for disclosure*

- 5.1. Presumption of disclosure:

All information and documents held by the EIF are subject to disclosure upon request, unless there is a compelling reason for non-disclosure (see "Exceptions" below).

- 5.2. Non-discrimination and equal treatment:

Every member of the public has the right to request and receive timely information/documents from the EIF. When considering a request for information/documents, the EIF does not discriminate or give special privileged access to information/documents.

### *Exceptions*

- 5.3. While the EIF is committed to a policy of presumption of disclosure and transparency, it also has a duty to respect professional confidentiality in compliance with European laws, in particular Article 339 TFEU, as well as legislation to protect personal data. National regulations and market standards covering business contracts and market activity may also apply to the EIF. There are therefore certain constraints on the disclosure of information/documents.

In applying the exceptions to disclosure, the EIF shall, in line with Section 3 above, have due regard for its specific role and activities, the need to protect its legitimate interests or the interests of its mandate principals and the confidentiality of its relationship with its counterparts.

- 5.4. Notably, access shall be refused where disclosure would undermine the protection of:

- a. The public interest, as regards:

- International relations; or
- The financial monetary or economic policy of the EU, its institutions and bodies or a Member State;

- b. Privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data.<sup>4</sup>
- 5.5. Access to information/documents shall also be refused where disclosure would undermine the protection of:
- Commercial interests of a natural or legal person<sup>5</sup>;
  - Intellectual property;
  - Court proceedings and legal advice;
  - The purpose of inspections, investigations and audits. Disclosure of information and documents collected and generated during inspections, investigations and audits shall be presumed to undermine the protection of the purpose of the inspections, investigations and audits even after these have been closed, or the relevant act has become definitive and the follow-up action has been taken<sup>6</sup>.
- Without prejudice to the above, the EIF may disclose a summary of investigations that have been closed, notably taking into account and in compliance with the principles and rules provided for in (i) European Union data protection legislation and European Data Protection Supervisor opinions and (ii) European Union legislation concerning investigations conducted by the European Anti-Fraud Office (OLAF) and (iii) EIF's Anti-Fraud Policy.
- 5.6. Access to information/documents, drawn up by EIF or received by the EIF and which are not *per se* destined for publication (i.e. for internal use as part of internal deliberations and preliminary consultations within the EIF or limited external use with shareholders/mandate principals/other stakeholders), whether before a decision has been taken by the relevant organ of the EIF or thereafter, shall be refused if disclosure of the document/information is expected to undermine the EIF's decision-making process.
- 5.7. The exceptions under 5.5 and 5.6 shall apply unless there is an overriding public interest in disclosure.
- 5.8. The grounds for refusal should be interpreted in a restrictive way, taking into account the public interest served by disclosure.
- 5.9. As regards third party documents (including shareholders, mandate principals, EU Member States, EU institutions and bodies), EIF shall consult with the third party whether the information in the document is confidential according to this Policy unless it is clear that the document shall or shall not be disclosed.

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<sup>4</sup> The protection of privacy and personal data is a fundamental right in the Charter of Fundamental Rights of the European Union. In processing personal data EIF applies, in accordance with Regulation (EC) N° 1049, the terms and conditions laid down in Regulation (EC) N° 45/2001. In this context, the EIF refuses access to documents containing personal data, notably those usually handled by its Human Resources division, where access to documents would not satisfy Regulation (EC) N° 45/2001 conditions for disclosure.

<sup>5</sup> The term "commercial interest" covers, but is not limited, to cases where the EIF concluded a confidentiality agreement. Also, commercial interests can be protected even after the expiration of the confidentiality agreement.

<sup>6</sup> For the purpose of interpreting paragraph 4.5., the presumption referred to in the fourth bullet point applies to inspections, investigations and audits including compliance due diligence carried out by, or on behalf of, the relevant services of the Fund, notably the fraud investigations, internal and external audit and the compliance functions; it does not apply to inquiries carried out in line with the EIB Group Complaints Mechanism's Principles, Terms of Reference and Rules of Procedure.

- 5.10. A mandate principal may request EIF not to disclose a document originating from such mandate principal without its prior agreement, preferably setting out the reasons for its objection by reference to the exceptions referred to in the present Policy.
- 5.11. The EIF does not object to business counterparts, shareholders or mandate principals making information/documents available on their relationship with the EIF unless they are specifically covered by confidentiality obligations.
- 5.12. Exceptions also cover information on individual allocations or investments made by business counterparts, including financial intermediaries. This information falls within the competence of the relevant business counterpart as part of the normal business relationship between that financial intermediary and its customers and investees.
- 5.13. Exceptions will only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. After 30 years, a document becomes subject to review for public archiving. In the case of documents covered by the exceptions relating to the protection of personal data or commercial interests of a natural or legal person including intellectual property, the exceptions may, if necessary, continue to apply after this period. In general, information shall only be held by the EIF until the end of the period during which it must be retained by EIF pursuant to applicable EIF retention principles and policies..

#### *Procedures for handling information requests*

The EIF's procedures for handling requests for information from the public are as follows:

- 5.14. All requests for disclosure of specific information/documents shall be handled promptly by the EIF, which will either grant full or partial access to the information/document requested (if only parts of a requested document are covered by any of the constraints above, information from the remaining parts shall be released) and/or state the grounds for the total or partial refusal.
- 5.15. Requests for information should preferably be addressed in writing to the EIF information desk ([info@eif.org](mailto:info@eif.org)). They can also be made in any other form and be sent to any of the EIF addresses.
- 5.16. The requester is not obliged to state reasons for the request.
- 5.17. If an oral request for information is too complicated or complex to process, the requester shall be asked to formulate the request in writing.
- 5.18. If a request is not sufficiently precise or if it does not enable the document, or information, to be identified, the requester shall be asked to clarify the request.
- 5.19. If information has already been released by the EIF, the requester shall be informed of how and where to obtain the requested information.
- 5.20. In the event of a request relating to a very long document or to a very large number of documents, the EIF may confer with the requester informally, with a view to finding a reasonable / appropriate solution.
- 5.21. Requests are processed by the EIF's information desk and are replied to without delay, i.e. normally no later than 15 working days following receipt.

- 5.22. In exceptional cases, for example in the event of a request relating to a very long document or when the information is not readily available and complex to collate, the time limit may be extended and the requester shall be informed accordingly no later than 15 working days following receipt.
- 5.23. The EIF shall, however, endeavour to provide a reply to such complex requests no later than 30 working days following receipt.
- 5.24. If, for reasons of confidentiality, EIF is unable to divulge the information or document requested, in full or partially, the reason(s) why such information cannot be provided shall be stated and the requester will be informed of the right to make a voluntary confirmatory request or lodge a complaint (as further set out below).
- 5.25. Information and documents shall be supplied in an existing version and format, or, if feasible, in a format according to the specific needs of the requester.
- 5.26. Subject to paragraph 4.3 above, EIF will answer requests for information in English.
- 5.27. Only the costs of producing and sending copies may be charged to the requester. The charge shall not exceed the real costs of producing and sending the copies.
- 5.28. The handling of requests shall be carried out in compliance with the rules on the protection of individuals with regard to the processing of personal data as laid down in Regulation (EC) No. 45/2001.
- 5.29. The EIF retains the possibility of refusing to follow up an application that is excessive or repetitive. The same applies to requests that are clearly frivolous or malicious or commercial in nature.
- 5.30. In the event of a total or partial refusal following the initial request, the requester may, within 15 working days of receiving the EIF's reply, make a confirmatory request asking the EIF to reconsider its position. Alternatively, the requester may lodge a complaint with the EIB Group Complaints Mechanism as further set out below.
- 5.31. In the event of a total or partial refusal following a confirmatory request, the EIF shall inform the requester of the remedies open to him or her, namely making a complaint to the EIB Group Complaints Mechanism or initiating court proceedings against the EIF before the Court of Justice of the European Union (the Court).
- 5.32. Failure by the EIF to reply to a request within the time limits described in article 5.21-5.23 shall be considered as a negative reply and entitle the requester to make a complaint to the EIB Group Complaints Mechanism as relevant, or institute court proceedings against the EIF before the Court.

## 6. PROVISIONS FOR COMPLAINTS AND APPEALS

### *Complaints Mechanism*

- 6.1. The provisions for complaints are determined for the EIB Group by the EIB Group Complaints Mechanism, Principles, Terms of Reference and Rules of Procedure which recognise the right of the members of the public to lodge a complaint concerning alleged maladministration and provides the public with a tool enabling alternative and pre-emptive resolution of disputes.
- 6.2. Any natural or legal person affected, or feeling affected, by a decision and/or action of the EIF, which includes failure to deliver according to this Transparency Policy, may lodge a complaint by e-mail to [complaints@eib.org](mailto:complaints@eib.org) or by filling in an online form available in all official languages of the EU (<http://www.eib.org/infocentre/complaints-form.htm>). Complaints must be lodged within one year from the date on which the facts upon which the allegation is grounded became known to the complainant.
- 6.3. In line with its rules of procedure, the EIB Group Complaints Mechanism does not deal with complaints which have already been lodged with other administrative or judicial review mechanisms or which have already been settled by the latter.

### *European Ombudsman*

- 6.4. In case of dissatisfaction with the outcome of a complaint lodged with the EIB Group Complaints Mechanism, EU citizens or any natural or legal person residing or having a registered office in an EU Member State can, in accordance with article 228 TFEU and regardless of a direct concern in the alleged maladministration, make a complaint to the European Ombudsman. Following the Memorandum of Understanding signed by EIB for the EIB Group with the European Ombudsman, the latter commits to systematically using its own initiative power in order to handle complaints lodged when the sole reason preventing an enquiry is the fact that the complainant is not a citizen of the European Union or a natural or legal person residing or having a registered office within the European Union.

### *Court of Justice of the European Union*

- 6.5. The EIF's decision following a confirmatory application shall also be subject to judicial appeal before the Court in accordance with the relevant provisions of the TFEU, in particular Articles 263 and 271. When deciding to challenge the EIF before the Court of Justice, stakeholders should take into consideration the fact that the judicial appeal may preclude access to alternative dispute resolution mechanisms as the EIB Group Complaints Mechanism and the European Ombudsman.

## 7. STAKEHOLDER ENGAGEMENT

- 7.1. The EIF promotes transparency as a way to strengthen its accountability. Therefore, the EIF aims to provide stakeholders with the information they required.
- 7.2. The EIF's stakeholder engagement follows best practice, aimed at increasing mutual understanding, addressing stakeholders' concerns and adjusting its activities accordingly,

targeting a possible gap between expectations, policy and practice and achieving coherence and accountability in EIF's policies and practices.

## 8. PROMOTING TRANSPARENCY

- 8.1. Weak governance, corruption and lack of transparency are serious brakes on economic and social development. The EIF actively promotes transparency and good governance in its transactions and generally with its counterparts.
- 8.2. The EIF integrates its policy framework into the EIB Group policies and maintains close contacts with other EU and international institutions and bodies to monitor and exchange views on new developments in the area of transparency and disclosure with a view to continuously improving its own policies and practices.
- 8.3. The EIF will continue to strengthen its efforts to improve its transparency, accountability and governance and to be, in particular, within the relevant EIB Group initiatives, at the forefront as a transparent and responsible institution.

## 9. RESPONSIBILITIES

- 9.1. Whereas the EIF Board of Directors has the competence to adopt the EIF Transparency Policy, its oversight and implementation falls under the responsibility of the Chief Executive. Responsibilities are deployed throughout the organisation as appropriate to ensure that the policy objectives are reflected in goals and activities at all levels of the organisation.
- 9.2. Resources are assigned for the implementation of the EIF Transparency Policy throughout the organisation. Relevant staff at all levels of the organisation are trained in how to handle transparency and disclosure issues, dialogue with stakeholders and other related topics.
- 9.3. The EIF Transparency Policy, in line with the EIB Group Transparency Policy, is subject to a continuous process of internal review and quality assessment. Formal reviews are envisaged to take place every five years or can be otherwise initiated, in coordination with and a result of the review process applied to the EIB Group Transparency Policy.
- 9.4. Where relevant, information on an annual basis, on the implementation of this Policy will be provided to the EIB for the purpose of the reporting provided by the EIB under article 9.4 of the EIB Group Transparency Policy.