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Access to Information Policy



European Bank
for Reconstruction and Development

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Section I: Purpose

The EBRD is committed to enhancing transparency and accountability, improving discourse with affected stakeholders and fostering good governance in respect of all its Operations and Activities, so as to promote economically and environmentally sustainable transition in its recipient countries and economies of operations, with emphasis on the private sector.

The EBRD recognises that, in order to fulfil the aforementioned commitment, it has to disclose information and consult with the public so as to increase knowledge and continuously promote awareness and understanding of the Bank's Operations and Activities and improve the public's ability to participate in an informed manner in consultations on its strategies and policies.

The EBRD recognises the developments made to advance the recognition and exercise of the right to access information as a human right and the importance of the principles, purposes and ultimate goals on access to information of the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

This Policy replaces the Public Information Policy from the effective date set out in Section IV. Any references in other EBRD documents to the "Public Information Policy as amended from time to time", the "PIP as amended from time to time" or equivalent references shall be deemed to be references to this Policy.

Section II: Definitions

Terms used in this Policy have the following meanings:

AIP or Policy	This Access to Information Policy (2019).
Activities	Technical assistance, advisory services, policy dialogue and cooperation, financed and/or implemented by the EBRD, or governance, administration and decision-making processes of the EBRD.
Bank or EBRD	The European Bank for Reconstruction and Development.
BoD Committee	A committee of the Board of Directors established pursuant to Section 11 of the Rules of Procedure of the Board of Directors.
BoG Committee	A committee of the Board of Governors established pursuant to Section 8 of the Rules of Procedure of the Board of Governors.
Confidential Information	The categories of information falling under Section III, paragraph 2 of this Policy.
Directive on Access to Information	Any directive relating to disclosure of Bank information issued by the President of the Bank in accordance with this Policy, as amended from time to time.
Enforcement Policy and Procedures	The Enforcement Policy and Procedures (2017), as amended from time to time.
Environmental and Social Policy	The Environmental and Social Policy (2019), including the associated performance requirements set out in such policy, as amended from time to time.
Evaluation Policy	The Evaluation Policy approved by the EBRD Board of Directors on 16 January 2013, as amended from time to time.
Independent Project Accountability Mechanism or IPAM	The independent project accountability mechanism established under the Project Accountability Policy.
Information Appeals Panel	The panel established pursuant to Section III, paragraph 5.2 (i) of this Policy.
Operations	Any equity, loan, guarantee or borrowing transaction of the EBRD in accordance with the Agreement Establishing the EBRD.
Organisation	Has the meaning given to this term in the Project Accountability Policy.
Prohibited Practice	Has the meaning given to this term in the Enforcement Policy and Procedures.
Project Accountability Policy	The Project Accountability Policy (2019), as amended from time to time.
Project	The set of works, goods, services and/or business activities defined in the financing agreements and for which EBRD financing is sought by a client, and as approved by the Board of Directors or, if the Board of Directors has delegated the approval authority, by Bank management.
Public Information Policy (2014)	The Public Information Policy (2014).
State Sector	Has the meaning ascribed to “state sector” in accordance with Article 11.3 (iii) (a) to (c) of the Agreement Establishing the EBRD.

Section III: Scope

1. Policy Principles

The EBRD is committed to principles of transparency, accountability and good governance in all its Operations and Activities. These principles are reflected in this Policy as follows:

1.1. Transparency

The EBRD is guided by the presumption that information relating to the Bank's Operations and Activities shall be disclosed in a clear, timely and appropriate manner unless such information falls under the exceptions to disclosure specified in this Policy.

This Policy sets out clear and well-defined exceptions to disclosure which take into account, in a balanced manner, the legitimate interests of the Bank, clients, shareholders, the public including affected people, counterparties and other stakeholders.

1.2. Accountability

The EBRD shares information on its Operations and Activities, in a timely and appropriate manner in order to support its commitment to accountability to stakeholders, facilitate dialogue and understanding, support policy design and strategic decision-making, and with a view to creating a wider impact beneficial to the fostering of transition of its recipient countries or economies of operations towards sustainable market economies.

The EBRD endeavours to identify, raise awareness and engage with a broad range of stakeholders including affected people and communities, civil society groups and members of the public, taking into account the diverse nature and significance of specific interests, including the interests of those who may face barriers in access to information.

The EBRD respects the right of people to provide input on the Bank's Operations and Activities and to seek and receive information relating to Operations and Activities which may affect them or their communities. The EBRD seeks to obtain input from a variety of sources, listens to input from stakeholders and engages in dialogue.

1.3. Client Responsibility to Affected Stakeholders

The EBRD works closely with its clients to provide sufficient information about the environmental and social risks and impacts arising from Projects and to engage with stakeholders in a meaningful, effective, inclusive and culturally appropriate manner consistent with the Environmental and Social Policy.

1.4. Good Governance

The EBRD maintains a clear process for dealing with requests for information and with appeals of an EBRD decision not to disclose requested information.

The EBRD monitors compliance with this Policy and its effectiveness and regularly reports to the public on the implementation of this Policy.

The EBRD reviews (i) the Access to Information Policy, (ii) the Environmental and Social Policy, (iii) the Project Accountability Policy and (iv) the Evaluation Policy on a periodic basis, engages in public consultations on drafts of such policies as part of such review process and discloses such policies to the public following approval by the EBRD Board of Directors.

2. Exceptions to Disclosure

The EBRD is committed to openness and transparency. However, there are instances where legitimate interests of the Bank, its clients, co-financiers, other counterparties or the public including affected people may need to be protected and therefore disclosure of information or documents is not possible. The exceptions to disclosure are based on the EBRD's determination that disclosure of certain types of information would cause harm to specific parties or interests that would outweigh the public interest in disclosure. To protect such legitimate interests, the following exceptions to disclosure shall apply:

2.1. Information associated with Deliberation and Decision-making

Deliberation, advice and decision-making need to be based on material information and/or discussion which is shared or conducted in a free and candid manner so that frank exchanges of views, ideas, analysis and approaches are not inhibited. Exceptions to disclosure under this category comprise:

- i. Information intended for internal deliberations including studies, reports, assessments, memoranda, analyses and other information prepared to support internal decision-making or information relating to audit matters.
- ii. Information related to, or documents approved by, the Board of Directors and BoD Committees, except for agendas and minutes of Board of Directors' meetings and documents expressly approved for disclosure by the Board of Directors.
- iii. Information related to the Board of Governors and BoG Committees, except for agendas and summary records of proceedings of Board of Governors' meetings, Governors statements and Governors resolutions.

- iv. Information in connection with deliberation, advice and decision-making between the EBRD, EBRD members and/or donors or other parties the EBRD co-operates with and any other information which, if disclosed, in the Bank's view would seriously undermine policy engagement and dialogue with a member country.
- v. Communications that are issued by or between members of the Board of Directors or Board of Governors, advisers and staff employed in the offices of the Board of Directors' members, members of the EBRD management, its staff, or its consultants, legal advisers, or agents.

2.2. Financial Information and Information Provided in Confidence

- i. Financial, commercial or proprietary information created or received by the Bank in the analysis, negotiation, conclusion, implementation and/or reporting of, or under, any proposed or actual investment authorised under Article 11 of the Agreement Establishing the Bank, any treasury operation, any guarantee under any of the Bank's facilities or any donor funded or technical assistance operation, unless permission is given by the entity or entities concerned to release this information. This category includes information that would, in the EBRD's view, be detrimental to the legitimate financial or commercial interests of the EBRD or EBRD counterparties if disclosed.
- ii. Information in the Bank's possession which was not created by the Bank and is identified by its originator as being sensitive or confidential, or when the originator has legitimately requested that its release be restricted.

- iii. Financial, commercial or proprietary information related to procurement processes, including pre-qualification information submitted by prospective tenderers, tenders, proposals or price quotations (other than the total contract price) or records of deliberative processes.

The exceptions set out in Section III, paragraph 2.2 (i) to (iii) above apply to any information created or received by the Bank in relation to, from, or on behalf of, any private or State Sector entity or their representatives or any external consultant(s) in the analysis of any operation considered or financed by the Bank or in the negotiation of any investment, loan or other operation.

The Bank does not disclose legal documentation, including all contractual documentation relating to a Bank Operation or Activity, or correspondence pertaining to any such Bank Operations and Activities, including documents or information relating to negotiations between the Bank and its clients, donors, co-financiers and other counterparties relating to a Bank Operation or Activity.

2.3. **Legal, Investigative and Integrity Information**

- i. Privileged information such as legal advice and correspondence with legal advisers or other information subject to professional secrecy including any information the disclosure of which might legitimately prejudice an investigation or any legal or regulatory proceedings, or legitimately subject the Bank to an undue risk in any contested matter such as any litigation or arbitration.

- ii. Information relating to any investigation of a Prohibited Practice, allegations of staff misconduct or other violation of the EBRD's applicable policies, or information relating to any integrity due diligence checks, integrity-related review or any advice and correspondence in connection with any integrity-related matter.

2.4. **Personal Information**

Any personal information that, if disclosed, would or would likely compromise the legitimate privacy interests of the person concerned, except to the extent permitted by the person concerned or by the EBRD rules. Such information includes information relating to appointment and selection processes, terms of employment, medical information, personal communications and information relating to proceedings of the EBRD's internal dispute resolution system and information relating to investigations into improper workplace behaviour and/or suspected misconduct and disciplinary procedures.

2.5. **Security, Safety and Compliance**

- i. Information that, if disclosed, could violate applicable law, or prove a threat to the national security of a member country.
- ii. Information that, if disclosed, would contravene the Agreement Establishing the European Bank for Reconstruction and Development, the By-Laws of the European Bank for Reconstruction and Development, the Rules of Procedure of the Board of Governors or the Rules of Procedure of the Board of Directors.

- iii. Information that might compromise the security of any individual including individuals seeking access to information or that would put the safety and security of any EBRD assets at risk as well as information about logistical or transport arrangements relating to the EBRD shipments of its assets and documents and the shipment of any personal property of any individual.

2.6. Deferred Disclosure

Where the Deputy Secretary General, in consultation with the Deputy General Counsel, determines that the legitimate interests protected by these exceptions to disclosure can be given appropriate protection by deferring the disclosure of information, then the disclosure of such information shall be deferred accordingly.

3. Override of Exceptions to Disclosure and of Disclosure Requirements

In order to ensure that competing legitimate interests of the Bank, its clients, shareholders, counterparties, the public including affected people and other stakeholders may be reconciled within the terms of this Policy, overrides of exceptions to disclosure and of disclosure requirements are established as follows:

- i. **Positive Override:** Information shall be disclosed by the Bank if a public interest served by disclosure of information covered by an exception to disclosure outweighs the harm arising from the disclosure of such information. Positive override determinations shall be made as follows:
 - a. Where the information is contained within a document approved by the Board of Directors or the Board of Governors, the positive override determination shall be made by the Board of Directors, following a recommendation by the President.

- b. For all information other than information under Section III, paragraph 3(i)(a) above, the positive override determination shall be made by the President.

- ii. **Negative Override:** Information that the Bank would normally disclose in accordance with this Policy shall not be disclosed if the harm arising from the disclosure of such information outweighs the legitimate interests served by disclosure. Negative override determinations shall be made by the Board of Directors, following a recommendation by the President.

4. Separation of Information not Subject to an Exception

A document containing information which is requested for disclosure may be redacted by the Bank to remove Confidential Information so that the remainder of the document, excluding such Confidential Information, can be disclosed in accordance with this Policy.

5. Information Requests and Appeals

5.1. Making a request for information

- i. All requests for information shall be made in writing. Requests shall be submitted in English, or in any of the official languages of the EBRD or national languages of EBRD recipient countries or economies of operations.
- ii. Requests shall be as clear and precise as possible to enable the EBRD to identify and locate the specific information sought. Where a request is insufficiently clear or precise to identify the information required, the Bank reserves the right to ask the requester to provide clarifications.

- iii. The Bank is not required to comply with any request that would require the Bank to create or develop information or data that does not already exist or is not available in the Bank's record keeping systems. This also applies to any requests for information on the same subject from the same person, group or organisation if the Bank has previously provided such information or has given reasons why it cannot provide the information.
- iv. The Bank shall acknowledge receipt of a request for information pursuant to this Policy promptly. The timeframe for responses to requests made in accordance with this Policy shall be set out in the Directive on Access to Information. The Bank reserves the right to respond collectively on its website to petitions, e-mail chains and similar multiple requests rather than individually in which case, the Bank shall inform the requester(s) accordingly. The Bank's response shall either provide the requested information or deny the request in whole or in part. In the case of a denial, the reasons for the decision shall be given. The Bank shall not impose fees or charges for responding to requests for information in accordance with this Policy.

5.2. Appeals

- i. A requester whose request for information has not been satisfied and who believes that this has been contrary to this Policy and/or the Directive on Access to Information, as applicable, may submit an appeal to the Information Appeals Panel consisting of the Secretary General, the General Counsel and another member of the Bank's Executive Committee designated by the President. Details on how to submit an appeal shall be made available on the EBRD website.
- ii. The appellant shall confirm that their initial request for information was submitted in accordance with this Policy and/or the Directive on Access to Information, as applicable, and shall provide a reasonable argument as to why, in their opinion, the EBRD has breached the Policy and/or the Directive on Access

to Information, as applicable, by failing to supply the requested information.

- iii. The Information Appeals Panel shall consider the appeal and shall issue a decision. Except as set out in Section III, paragraph 5.3 below, the decision of the Information Appeals Panel shall be final.
- iv. The Secretary General or their designated delegate shall notify the appellant in writing of the decision within the timeframe specified in the Directive on Access to Information and shall provide reasons for the decision where the appeal is not upheld by the Information Appeals Panel and, where the appeal is not upheld, shall also inform the President and the Board of Directors.

5.3. Recourse in accordance with the Project Accountability Policy

- i. In cases where a person or an Organisation who believe they are affected, or likely to be affected, by a Project allege that the Bank has failed to disclose Project specific information in accordance with this Policy and/or the Directive on Access to Information, as applicable, such person or Organisation may submit a request to the Independent Project Accountability Mechanism. Information on how to submit such a request shall be provided on the EBRD website.
- ii. The applicable version of the Access to Information Policy and/or the Directive on Access to Information that is subject to IPAM review regarding disclosure of Project information is the version of the policy and/or directive, as applicable, that was in force at the time the Project was approved by the Board of Directors or, if the Board of Directors has delegated the approval authority, by Bank management.

6. Policy Monitoring

The Secretary General, advised as necessary by the General Counsel, shall monitor implementation of this Policy and report on implementation in accordance with this Policy.

Section IV: Waivers, Exceptions and Disclosure

Waivers

The Board of Directors may grant a deviation from a requirement of this Policy.

Exceptions

Not applicable.

Disclosure

This Policy shall be disclosed on the Bank's website promptly following its approval by the Board of Directors.

Section V: Transitional Provisions

The President may determine that implementation of disclosure of certain information in accordance with this Policy requires (i) changes to the operational processes of the Bank or (ii) development and/or deployment of enabling information technology systems. In such cases, the President may determine that implementation of such disclosure shall become effective within an appropriate timeframe after the effective date of this Policy set out in Section VI.

Any appeals received by the Bank on or after the date of entry into force of this Policy which relate to information requests received by the Bank prior to the date of entry into force of this Policy shall be governed by the provisions of the Public Information Policy (2014).

Section VI: Effective Date

This Policy becomes effective on 1 January 2020.

Section VII: Decision-Making Framework

Accountable

The Secretary General is accountable for this Policy.

Responsible

The Deputy Secretary General is responsible for this Policy.

Section VIII: Review and Reporting

Review

The Policy shall be subject to review by the Board of Directors, with a public consultation process, by the end of 2024.

The Board of Directors may approve revisions to the Policy at any stage without need for public consultations where revisions are non-substantive in nature or arise as a result of changes to another Bank policy which has been the subject of public consultations.

Reporting

The Secretary General shall report to the Board of Directors on the implementation of the Policy on an annual basis. The annual report on implementation of the Policy shall set out a summary of any prospective changes, consistent with this Policy, to the Directive on Access to Information. This summary of prospective changes to the Directive on Access to Information, if any, shall be disclosed on the EBRD website at the time when the annual implementation report is submitted to the Board of Directors.

Subsequent to the discussion by the Board of Directors, the annual implementation report shall be disclosed on the EBRD website, together with any updated version of the Directive on Access to Information (as approved by the President).

Section IX: Related Documents

1. Project Accountability Policy (2019)
2. Environmental and Social Policy (2019)
3. Public Information Policy (2014)

EBRD contacts

European Bank for Reconstruction and Development
One Exchange Square, London
EC2A 2JN
United Kingdom

www.ebrd.com

Switchboard/central contact

Tel: +44 20 7338 6000

Information requests

For requests and enquiries, please go to
www.ebrd.com/inforequest

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