

POLICY

Access to Information Policy

[21 January 2019]

(draft for public consultation)

The draft Access to Information Policy is open for public consultation until 6 March 2019. During the consultation, we will be seeking the views of EBRD shareholders, donors, clients, CSOs, industry and business organisations, trade unions, other Multilateral Development Banks and International Financial Institutions, other EBRD stakeholders, and the public in general on the draft policy. Public comments will be responded to, and summarised in the “Report on the Invitation to the Public to Comment” that will be presented to the EBRD Board of Directors together with the final draft of the Access to Information Policy in Q2 of 2019.

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Access to Information Policy

Section I: Purpose

The purpose of the Access to Information Policy is to increase awareness and understanding of the EBRD's role and its Operations and Activities, to continue to strengthen public trust in the institution and its mandate to foster transition in its recipient countries or economies of operations towards sustainable market economies, while taking into account the needs of stakeholders and the Bank's private sector orientation.

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) POL/2017/01, 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 as approved by the Board of Directors or, if the Board of Directors has delegated the approval authority, by Bank management.
Prohibited Practice	Has the meaning given to this term in the Enforcement Policy and Procedures.
Project Accountability Policy	The Project Accountability Policy (2019) POL/[●]/[●], 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) POL/2018/1.
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, a business-sensitive approach, 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 set out 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, its clients, shareholders, counterparties and other stakeholders.

1.2. Business-Sensitive Approach

As an international financial institution with the majority of its Operations and Activities in the private sector, the EBRD must maintain the confidence and trust of its clients, co-financiers and other counterparties. The EBRD adopts a business-sensitive approach taking into account concerns about the treatment of confidential and commercially sensitive information, the disclosure of which could affect clients’, co-financiers’ and other counterparties’ willingness to work with the EBRD.

1.3. Accountability

The EBRD shares information on its Operations and Activities, in a timely and appropriate manner in order to facilitate dialogue and understanding, to 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. 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 is willing to listen and is open to dialogue. The EBRD works closely with its clients to provide appropriate information, in a suitable manner, to people affected by its Operations and Activities.

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 the Policy and its effectiveness and regularly reports on the implementation of this Policy.

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 or other counterparties may need to be protected and therefore disclosure of information or documents is not possible. 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 needs 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 and ideas are not inhibited. Exceptions to disclosure under this category comprise:

- i. Information intended for internal purposes or protected under the Bank's internal classification regimes.
- ii. Information related to the Board of Directors and BoD Committees, except for agendas and minutes of Board of Directors' meetings.
- iii. Documents approved by, or decisions of, the Board of Directors, unless approval for disclosure has been given by the Board of Directors.

- iv. 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.
- v. Information in connection with deliberation, advice and decision-making between the EBRD and donors or other parties the EBRD co-operates with.
- vi. Studies, reports, assessments, memoranda, analyses and other information prepared to support internal decision-making and/or relating to audit matters.
- vii. 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 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. 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. Information relating to Policy Engagement

Information which, if disclosed, in the Bank's view would seriously undermine policy engagement and dialogue with a member country. This includes any documents, memoranda,

or other communications which are exchanged with member countries, with other organisations and agencies, or with or between members of the Board of Directors (or the advisers and staff of the Board of Directors members), where these relate to the exchange of ideas between these groups, or to the deliberative or decision-making process of the Bank, its member countries, its Board of Directors or other organisations, agencies or entities with whom it cooperates.

2.4. 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 prejudice an investigation or any legal or regulatory proceedings, or 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.

2.5. 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.

2.6. Security, Safety and Compliance

- i. Information that, if disclosed, could violate the 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 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.

2.7. 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 to Exceptions to Disclosure and of Disclosure Requirements

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

- i. **Positive Override:** Information shall be disclosed by the Bank if a legitimate 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. Redaction of Information

Where the EBRD discloses any information pursuant to this Policy, the relevant document containing such information may be redacted to comply with the exceptions set out in Section III, paragraph 2 of this Policy, as determined by the EBRD.

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 as to the specific information sought. Where a request is insufficiently clear or precise to identify the information required, or is unreasonably broad, the Bank reserves the right to ask the requester to provide clarifications or to narrow down the scope of the request. The Bank further reserves the right to reject requests that are unclear in what information is being sought or, in the Bank's view, unreasonably broad.

- iii. The Bank shall not respond to anonymous or unsupported requests or to any request that requires the Bank to create, develop or collate information or data. This also applies to requests for information on the same subject from the same person 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. 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.

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 be required to show that an 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 that 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 an appellant believes the Bank has failed to disclose Project specific information in accordance with this Policy and/or the Directive on Access to Information, as applicable, the appellant 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.

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

The Secretary General is accountable for this Policy.

The Deputy Secretary General is responsible for this Policy.

Section VIII: Review and Reporting

Review

The Policy shall be subject to review, with a public consultation process, in May 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 implementation of the Policy on an annual basis. The Secretary General's report shall be disclosed on the Bank's website.

Section IX: Related Documents

1. Project Accountability Policy (2019) POL/[●]/[●]
2. Environmental and Social Policy (2019) POL/[●]/[●]
3. Public Information Policy (2014) BDS14-084 (Final) (POL/2018/1)

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