

COMPLAINTS MECHANISM

SG/A/2024/01

Global Emerging Markets Consortium: Disclosure of the General Assembly Annual Meeting Minutes

CONCLUSIONS REPORT

25 April 2025



Global Emerging Markets Consortium: Disclosure of the General Assembly Annual Meeting Minutes

Complaint confidential: No

External distribution

Complainant

Internal distribution

Management Committee
Secretary General
Inspector General
Relevant EIB services

Disclaimer

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 7 April 2025 representing the report's cut-off date. The conclusions are addressed solely to the EIB Group.

The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism is a tool enabling the resolution of disputes if any member of the public feels that the European Investment Bank (EIB) might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgment of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights, applicable law, or the principles of good administration. Maladministration may relate to the EIB Group's decisions, actions or omissions and this may include the environmental or social impacts of the EIB's projects and operations.

One of the main objectives of the EIB Group Complaints Mechanism is to ensure the right to be heard and the right to complain. For more information on the EIB Group Complaints Mechanism please visit: <https://www.eib.org/en/about/accountability/complaints/index.htm>.

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1 BACKGROUND

1.1 The complaint

- 1.1.1 On 29 April 2024, the European Investment Bank Group Complaints Mechanism (EIB-CM) received a complaint from an individual (“the complainant”) operating a blog focussed on access to information at international organisations. The complaint concerns the disclosure of information contained in the *GEMs [Global Emerging Markets] Consortium – General Assembly Annual Meeting Executive Summary and Minutes* (“document at issue”). The complainant requested the document at issue on 18 December 2023 pursuant to the EIB Group Transparency Policy (EIB-TP)¹ (“initial application”). The EIB’s reply to the complainant’s initial application, dated 26 January 2024, is provided under section 1.2 below².
- 1.1.2 Having been refused access to the document at issue on the basis of Article 5.7 of the EIB-TP (exception relating to the protection of the decision-making process)³, the complainant considers that the reasons put forward by the EIB in justifying full refusal of access to the document at issue are erroneous and in contravention to the EIB-TP. More specifically, the complainant submits that the EIB has misapplied two provisions of the EIB-TP: Articles 5.7 and 5.10⁴. The complainant contends that the EIB has made a blanket refusal in handling the complainant’s initial application rather than a concrete, individual assessment of the content of the document at issue.
- 1.1.3 As regards Article 5.7 of the EIB-TP, the complainant objects to the statement of reasons provided by the EIB with the following counter-arguments:

Statement of reasons provided by the EIB in justifying the application of Article 5.7 of the EIB-TP	Counter-arguments posed by the complainant
<p><i>The minutes contain technical and strategic opinions for internal use as part of deliberations among the GEMS Consortium which, if disclosed, would seriously undermine the capacity of the GEMS Consortium and its members (including the EIB) to document its work in progress and take decisions on the issues contained in the minutes.</i></p>	<p>According to the complainant, such ‘deliberative process exemptions’ are designed to protect the free flow of ideas. Given the blanket application by the EIB in this instance, the complainant questions whether such protection is being applied to statements of fact and/or to outcomes of the deliberative process (<i>conclusions</i>) rather than to opinions.</p> <p>The complainant argues that disclosure of facts will not “seriously undermine” the discussion or inhibit the expression of opinions, and that the EIB has made no case</p>

¹ Available at: <https://www.eib.org/en/publications/eib-group-transparency-policy-2021>

² The complainant did not submit a confirmatory application to the Bank, i.e. requesting that the EIB review their decision. Rather, a complaint was directly lodged with the EIB-CM.

³ Article 5.7 reads:

Access to information/documents, drawn up by the EIB for internal use or received by the EIB, which relate to a matter where the decision has not been taken by the relevant body of the EIB, shall be refused if disclosure of the document/information would seriously undermine the EIB’s decision-making process.

Access to information/documents containing opinions for internal use as part of deliberations and preliminary consultations within the EIB or with Member States/other stakeholders shall be refused even after the decision has been taken if disclosure of the information/document would seriously undermine the EIB’s decision-making process.

⁴ Article 5.10 reads:

If only parts of the document requested are covered by any of the exceptions, the remaining parts of the document shall be disclosed.

Statement of reasons provided by the EIB in justifying the application of Article 5.7 of the EIB-TP	Counter-arguments posed by the complainant
	for what would be undermined or how the consequences would be serious.
<p><i>Many of these issues still require action points and external pressure could be exerted on the members of GEMs to influence those decisions.</i></p>	<p>According to the complainant:</p> <ul style="list-style-type: none"> • using external pressure as justification is misplaced, with no such exception provided in the EIB-TP; • the fact that minutes may reflect incomplete action is not a compelling argument for non-disclosure. Even interim decisions are decisions that should be disclosed.
<p><i>Moreover, certain decisions mentioned in the minutes have already been superseded.</i></p>	<p>According to the complainant:</p> <ul style="list-style-type: none"> • minutes by their very nature only capture the past; • post-hoc developments should never be a reason to justify secrecy about documents; • if decisions were taken and memorialised in the minutes, those are facts, accurate as of that moment, and documents about them should be disclosed.
<p><i>Disclosure would also seriously undermine the EIB's capacity to carry out its role as Secretariat of the GEMs Consortium and to ensure a smooth and effective coordination of the implementation of the issues reflected in the minutes. Ultimately this would seriously undermine the decision-making process of the EIB since said smooth and effective coordination of the GEMs consortium is instrumental to the current business of the EIB.</i></p>	<p>According to the complainant:</p> <ul style="list-style-type: none"> • this ambiguous argument seems irrelevant because implementation occurs after the meeting; • documents on the creation of a policy shouldn't be disclosed because the policy is being implemented; • the minutes of the General Assembly might provide instructions to the Secretariat, but that is a matter of public record. What happens later is irrelevant; • this request is for the General Assembly minutes, not for other EIB documents.

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- 1.1.4 As regards Article 5.10 of the EIB-TP, the complainant disputes the EIB's statement that a partial disclosure of the document at issue *would not be meaningful*. According to the complainant, the EIB-TP does not stipulate that a redacted document has to be meaningful. Rather, it requires disclosure of material that is not exempt under the concerned provision of the EIB-TP.

1.2 The initial application

- 1.2.1 On 18 December 2023, the complainant requested the EIB for access to “*the minutes of the GEMS General Assembly annual meeting held in 2023*”.
- 1.2.2 In its response dated 26 January 2024, the EIB specified the grounds for its full refusal of access to the document at issue:

[...] We regret to inform you that the EIB is not in a position to disclose the requested document. The minutes contain technical and strategic opinions for internal use as part of deliberations among the GEMS Consortium which, if disclosed, would seriously undermine the capacity of the GEMS Consortium and its members (including the EIB) to document its work in progress and take decisions on the issues contained in the minutes. Many of these issues still require action points and external pressure could be exerted on the members of GEMS to influence those decisions. Moreover, certain decisions mentioned in the minutes have already been superseded. Disclosure would also seriously undermine the EIB's capacity to carry out its role as Secretariat of the GEMS Consortium and to ensure a smooth and effective coordination of the implementation of the issues reflected in the minutes. Ultimately this would seriously undermine the decision-making process of the EIB since said smooth and effective coordination of the GEMS consortium is instrumental to the current business of the EIB⁵.

No overriding public interest in disclosure has been deemed to exist, as none of the information contained in the requested document relates to emissions into the environment.

In line with Art. 5.10, EIB-TP, the Bank has also assessed the possibility to disclose parts of the requested document that would not fall under the above-mentioned disclosure exception but found that such a partial disclosure would not be meaningful.

1.3 The document at issue

- 1.3.1 The EIB is a founding member of the Global Emerging Markets (GEMs) Risk Database Consortium (“the Consortium”)⁶. The Consortium compiles, calculates, maintains and owns rights in and to a database of certain credit risk information.
- 1.3.2 The Consortium has entrusted the EIB to perform the functions of the GEMs Secretariat, which is comprised of the GEMs Secretary General and several EIB staff members. It facilitates the workflows of the Consortium and coordinates the collaboration with the member institutions. The GEMs Secretariat maintains the data submission templates, documentation framework and credit risk methodologies, and coordinates their evolutions in close collaboration with member institutions' delegates. It steers the production of the Consortium's internal reports and publications, and oversees the development of the GEMs Webtool, which hosts the database and allows member institutions' delegates to perform statistical queries.
- 1.3.3 The GEMs Secretariat also facilitates the cooperation within the member institutions (27 Multilateral Development Banks and Development Finance Institutions) by organising annual

⁵ Article 5.7 of the EIB-TP.

⁶ Available at: <https://www.gemriskdatabase.org>

meetings for the general assembly and working groups, and running working group activities throughout the year.

- 1.3.4 The Consortium's member institutions representatives meet twice yearly: at the beginning of the year for a Working Group Annual Meeting and the latter half of the year for a General Assembly Annual Meeting. The General Assembly consists of risk management professionals from the respective member institutions and is concerned with the technical developments around data collection and application of GEMs output statistics, methodology, reporting and other developments as guided by the GEMs Steering Committee.
- 1.3.5 In 2023, the Consortium met in Cairo, Egypt between 25-28 October for its General Assembly Annual Meeting. During the event, the GEMs Secretariat and the representatives of member institutions reviewed the initiatives undertaken during the year and discussed current and upcoming developments.
- 1.3.6 The document at issue provides a written record (executive summary and minutes) of the 2023 General Assembly Annual Meeting, particularly items discussed on 26-27 October 2023. It was produced by the EIB in its capacity as the GEMs Secretariat.

1.4 Work performed

- 1.4.1 When acknowledging receipt of the complaint on 17 May 2024, the EIB-CM informed the complainant of the case reference number and of the EIB-CM's policy on confidentiality.
- 1.4.2 Upon admissibility of the complaint, the EIB-CM conducted an initial meeting with the EIB operational services concerned by the case. The allegations had been clearly set out in the complaint. Therefore, the EIB-CM did not consider it necessary to seek further clarifications from the complainant. Over the course of the compliance review, the EIB-CM conducted additional meetings with the EIB operational services to collect more detailed information and documentation.
- 1.4.3 Based on the collected and analysed information, the EIB-CM prepared this Conclusions Report.

2 REGULATORY FRAMEWORK

2.1 The EIB Group Complaints Mechanism

- 2.1.1 The **EIB Group Complaints Mechanism Policy**⁷ tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB⁸. Maladministration means poor or failed administration; this occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards, and procedures⁹.
- 2.1.2 The EIB Group Complaints Mechanism Policy specifies that the EIB-CM reviews the EIB's activities with a view to determining whether maladministration, attributed to the EIB, has taken place¹⁰.

⁷ Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf

⁸ Article 5.1.3 of the EIB Group Complaints Mechanism Policy.

⁹ Article 3.1 of the EIB Group Complaints Mechanism Policy.

¹⁰ Article 5.3.3 of the EIB Group Complaints Mechanism Policy.

2.2 The EIB Group Transparency Policy

- 2.2.1 The **EIB-TP**¹¹ (“the Policy”) was adopted and published in November 2021. The Policy sets out the EIB Group’s approach to transparency and stakeholder engagement, laying down provisions for the proactive publication of information and documents and their disclosure upon request.
- 2.2.2 The Policy is steered by a number of guiding principles, including that of openness and the highest possible level of transparency with the underlying presumption that information will be made available to third parties (the public) unless it is subject to a defined exception (“presumption of disclosure”, as laid down in Section 5 of the Policy concerning Disclosure of Information), based on the principle of non-discrimination and equal treatment and in line with European Union legislation¹².
- 2.2.3 The Policy is further guided by the principle of ensuring trust and safeguarding sensitive information. As financial institutions, the members of the EIB Group must maintain the confidence and trust of their clients, co-financiers, investors and other relevant third parties. It is therefore necessary to allay concerns about the treatment of confidential information which, otherwise, could affect these partners’ willingness to work with the EIB Group and thus impede its members from fulfilling their respective missions and objectives. The Policy ensures that information is protected from disclosure when disclosure would undermine the legitimate rights and interests of third parties, and/or of the EIB Group, in accordance with the exceptions defined in the Policy¹³.
- 2.2.4 Article 3.4 of the Policy notes consistency with the legal obligations of the EIB in respect to the principle of openness (enshrined in Article 1 of the Treaty on European Union) and the right of public access to information/documents (Article 15(3) of the Treaty on the Functioning of the European Union (TFEU) and Article 42 of the Charter of Fundamental Rights of the European Union). Article 3.7 of the Policy, further elaborating on Article 15(3) of the TFEU, provides that the EIB itself should determine, in a way consistent with the principles of openness, good governance and participation, how the general principles and limits governing the right of public access should apply in relation to its specific functions as a bank. The EIB achieves the latter through the Policy and specifically through the applications of the exceptions to access set out in Section 5 of the Policy (§2.2.6).
- 2.2.5 The Policy is based on a “presumption of disclosure”. This means that all information and documents held by the EIB are subject to disclosure upon request, unless there is a compelling reason for non-disclosure¹⁴.
- 2.2.6 Section 5 of the Policy lays down such exceptions to disclosure of information/documents. These exceptions serve to protect justified interests that could be undermined if the requested information were disclosed.
- 2.2.7 Article 5.3. of the Policy provides that:

While the Bank is committed to a policy of presumption of disclosure and transparency, it also has a duty to respect confidentiality in compliance with EU laws, including the obligation not to disclose information of the kind covered by the obligation of professional secrecy in accordance

¹¹ Available at: https://www.eib.org/attachments/strategies/eib_group_transparency_policy_2021_en.pdf

¹² Article 2.1 of the EIB-TP.

¹³ Article 2.5 of the EIB-TP.

¹⁴ Article 5.1(a) of the EIB-TP.

with Article 339 TFEU, as well as legislation to protect personal data. National regulations and banking sector standards covering business contracts and market activity may also apply [...]

In applying the exceptions to disclosure, the EIB shall, in line with Article 3.7 above, have due regard for its specific role and activities, and the need to protect its legitimate interests and the legitimate interests of its clients, and thus the confidentiality of the relationship between the EIB and its clients and other relevant counterparts [...]

2.2.8 Of relevance to the complaint at issue, Article 5.7 of the Policy states:

Access to information/documents, drawn up by the EIB for internal use or received by the EIB, which relate to a matter where the decision has not been taken by the relevant body of the EIB, shall be refused if disclosure of the document/information would seriously undermine the EIB's decision-making process.

Access to information/documents containing opinions for internal use as part of deliberations and preliminary consultations within the EIB or with Member States/other stakeholders shall be refused even after the decision has been taken if disclosure of the information/document would seriously undermine the EIB's decision-making process.

2.2.9 Additionally, in accordance with Article 5.10 of the Policy, *"If only parts of the document requested are covered by any of the exceptions, the remaining parts of the document shall be disclosed."*

2.2.10 Section 5 of the Policy additionally contains procedures for handling information requests.

2.2.11 Article 5.25 of the Policy states that *"If, in order to safeguard the interests protected by this Policy, the EIB is unable to divulge the information requested, in full or partially, the reason(s) why such information cannot be provided shall be stated [...]"*

2.3 Interpretive resources

European Ombudsman guide on the right of public access to EU documents

2.3.1 The **European Ombudsman guide on the right of public access to EU documents**¹⁵ aims to provide detailed information and guidance for stakeholders on the right to public access to EU documents¹⁶, and how this is applied across the EU institutions, bodies, offices and agencies.

2.3.2 Where an EU institution invokes a general presumption to refuse access, the requester can seek to rebut this by showing that the basis for the general presumption does not exist. For example, if the general presumption is based on the fact that information can be presumed to be commercially confidential, that presumption can be rebutted by pointing out that the information is now obsolete¹⁷.

2.3.3 However, even if a general presumption is rebutted, and the EU institution carries out an individual assessment of the document, it may refuse access based on the specific content of

¹⁵ Available at: <https://www.ombudsman.europa.eu/en/document/en/163353>

¹⁶ As per the European Ombudsman guide on the right of public access to EU documents, the EU Treaties and the Charter of Fundamental Rights of the EU give the public a right to ask for copies of documents possessed by EU institutions, bodies, offices and agencies.

¹⁷ Question 7.2 of the European Ombudsman guide on the right of public access to EU documents.

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the document or the specific circumstances that relate to how the document is currently being used¹⁸.

- 2.3.4 As relates to the interpretation of the exception for protecting internal decision-making¹⁹, the European Ombudsman notes that such exceptions²⁰ seek to protect the process by which decisions are taken within an EU institution²¹.
- 2.3.5 Wider access may be possible where the decision-making process has already ended. In such circumstances, this exception continues to apply to documents containing opinions for internal use as part of deliberations and preliminary consultations within the EU institution concerned²².
- 2.3.6 The decision-making process in question need not give rise to a situation where a legally binding decision is adopted. *Any* deliberative process, aimed at allowing an EU institution to take a position on a given matter, constitutes decision making²³.
- 2.3.7 The first sub-paragraph of the internal decision-making exception²⁴ can cover *any* document used in decision-making where that process is *ongoing*. In contrast, the second sub-paragraph of said exception²⁵, which applies to situations in which the relevant decision has been adopted, only covers any document containing *opinions for internal use as part of deliberations and preliminary consultations within the institution*²⁶.
- 2.3.8 According to the European Ombudsman guide on the right of public access to EU documents, this implies that purely factual information, such as statistics, evidence or background information, gathered for the purpose of decision-making, can be protected under the first sub-paragraph of the exception until such time as the decision is adopted, but cannot be protected under the second sub-paragraph of the exception after the decision is adopted²⁷.
- 2.3.9 It is important for the EU institution to explain the nature of the decision-making process at stake and whether it is ongoing or not and provide the reasons for this. Similarly, an EU institution cannot rely on the first sub-paragraph of the exception to refuse access in circumstances where it has not adopted a decision on a given matter but still has the intention to do so. According to [EU case-law](#) (paras. 76 - 79), in those circumstances, the decision-making process would not have purpose and the intention of an institution to adopt a future decision is not sufficient to find that such a process continues²⁸.
- 2.3.10 The wording of the internal decision-making exception would seem to exclude its application to inter-institutional decision making, since it refers to a matter where the decision has not been taken *by the institution* holding the document. However, it could be argued that all inter-

¹⁸ Ibid.

¹⁹ The exception for protecting internal decision-making referenced by the European Ombudsman stems from Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not directly to the EIB-TP.

²⁰ The word 'exceptions' in its plural form is used in reference to the two exceptions provided under Article 4(3) of Regulation 1049/2001. It should be noted that the EIB-TP also contains such individual paragraphs (¶2.2.8).

²¹ Article 7.14 of the European Ombudsman guide on the right to public access to EU documents.

²² Article 7.1 of the European Ombudsman guide on the right to public access to EU documents.

²³ Article 7.14 of the European Ombudsman guide on the right to public access to EU documents.

²⁴ Article 4(3) of Regulation 1049/2001 first sub-paragraph reads:

Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

²⁵ Article 4(3) of Regulation 1049/2001 second sub-paragraph reads:

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

institutional decision making also involves, to some degree, decision making *within* each of the participating EU institutions²⁹.

2.3.11 It is also important to mention that the risk to either decision-making process (open or closed) must be ‘serious’³⁰.

2.3.12 The exception does not apply where there is an overriding public interest in disclosure³¹.

Jurisprudence of the Court of Justice of the EU

2.3.13 The rules on access to documents can be understood and applied in accordance with the case-law of the Court of Justice of the EU³².

2.3.14 Regulation No 1049/2001 lays down, as a general rule, that the public may have access to the documents of the institutions but provides for exceptions by reason of certain public and private interests.

2.3.15 According to EU case-law, an EU institution is required to adopt a broad interpretation of the right of access and a narrow interpretation of the exceptions to that right of access³³.

2.3.16 According to settled case-law, the exceptions to document access must be interpreted and applied strictly so as not to frustrate application of the general principle that the public should be given the widest possible access to documents held by the institutions³⁴.

2.3.17 The application of the exception laid down in the first sub-paragraph of Article 4(3) of Regulation No 1049/2001 as relates to internal decision-making³⁵, requires it to be established that access to the documents requested is likely to undermine specifically and actually the protection of the institution’s decision-making process, and that the likelihood of that interest being undermined is reasonably foreseeable and not purely hypothetical³⁶.

2.3.18 In order to be covered by the exception provided for in the first sub-paragraph of Article 4(3) of Regulation No 1049/2001(¶2.3.7), the decision-making process must be seriously undermined. That is the case, in particular, where the disclosure of the document in question has a substantial impact on the decision-making process. The assessment of that serious nature depends on all of the circumstances of the case including, inter alia, the negative effects on the decision-making process relied on by the institution³⁷.

2.3.19 Article 4(6) of Regulation No 1049/2001 provides that “[i]f only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released”. This article calls for a *specific* examination of the content of each document. Indeed, only such

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² The jurisprudence of the Court of Justice of the EU referenced under section 2.3 relates to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not directly to the EIB-TP.

³³ Case T-307/16, paragraph 34.

³⁴ Case C-266/05 P Sison v Council [2007] ECR I-1233, paragraph 63; Sweden and Turco v Council, paragraphs 35 and 36.

³⁵ The first sub-paragraph of Article 4(3) of Regulation No 1049/2001 reads:

Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.

³⁶ Judgment of 22 March 2018, De Capitani v Parliament, T-540/15, EU:T:2018:167, paragraph 63.

³⁷ Judgment of 7 June 2011, Toland v Parliament, T-471/08, EU:T:2011:252, paragraph 71.

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an examination can enable the institution to assess the possibility of granting the applicant partial access³⁸.

3 FINDINGS

- 3.1.1 The document at issue, that is, the *GEMs Consortium – General Assembly Annual Meeting Executive Summary and Minutes*, is composed of 16 pages. It predominately contains technical information and developments discussed on 26 and 27 October 2023 during the Consortium's General Assembly Annual Meeting held in Cairo, Egypt. The document at issue also contains action points for some of the 13 items discussed over the two-day period and a list of participants on pages 15 and 16.
- 3.1.2 As a preliminary point, it should be recalled that the EIB relied on the exception relating to the protection of the decision-making process in refusing access to the requested document on the basis of Article 5.7 of the EIB-TP (¶2.2.8).
- 3.1.3 It should be noted that Article 5.7 of the EIB-TP contains two exceptions — one under each sub-paragraph — protecting two different interests and subject to different conditions (¶2.3.7-2.3.9). One of the exceptions applies before the relevant decision has been taken and the other exception applies after the decision has been taken.
- 3.1.4 The EIB relied on a number of grounds for which to refuse full access to the document at issue in relation to the above-mentioned exception (¶1.1.3). It should be noted that the EIB's reply to the complainant does not specify to which sub-paragraphs its grounds apply.
- 3.1.5 Additionally, the EIB stated that, with respect to Article 5.10 of the EIB-TP (¶2.2.9), partial disclosure of the document at issue would not be meaningful (¶1.1.4).
- 3.1.6 An inspection of the document at issue by the EIB-CM confirms that some, not all, of the information contained therein is gathered for the purpose of decision-making.
- 3.1.7 Having thoroughly reviewed the contents of the document at issue and the EIB's statement of reasons (¶1.1.3-1.1.4), and considering the evidence provided by the EIB relevant services, the EIB-CM is of the opinion that the Bank did not conduct a *specific* examination of the document's content with a view to potentially granting partial access to it (¶2.3.19). There are indications that Article 5.7 of the EIB-TP may have been used as a blanket justification in this particular instance.
- 3.1.8 A primary indication is that significant portions of the document at issue do not pertain to any deliberative process which aims at allowing the Consortium to take a position on a given matter. This includes, for example, credit risk statistics contained in the 2022 Annual Report and publications (private/sub-sovereign and sovereign/sovereign-guaranteed) and data quality and methodological advancements. The EIB-CM also notes that the final pages of the document at issue (pages 15-16) contain a list of participants where no risk of the decision-making process being undermined can be established, although data protection considerations could potentially be warranted.
- 3.1.9 For this reason, the EIB-CM considers that the exception relied on by the EIB in refusing access to the document at issue was not interpreted strictly with a view to granting the greatest possible access to the document (¶2.3.16) and was, thus, incompatible with the Bank's presumption of disclosure principle (¶2.2.2). Indeed, given that not all the information contained in the document at issue is gathered for purposes of decision-making, it is reasonable to conclude

³⁸ Case T-2/03, paragraph 69.

that said information could have been disclosed, therefore complying with the provisions of Article 5.10 of the EIB-TP.

- 3.1.10 Moreover, the EIB unilaterally concluded that ‘partial access would not be meaningful’ (¶3.1.5). It should be recalled that it is not for the EIB to determine what is meaningful or not for the applicant. Furthermore, the EIB does not require the requester for documents to demonstrate that the requested document is ‘meaningful’ to them. In any event, the determination of what is meaningful or not for the requester cannot be up to the institution which must respond to their request. Finally, the provision in question here cannot be interpreted in such a way that it amounts to exempting the institution concerned from an obligation, that which is the disclosure of the parts of the document not covered by the exceptions provided for by the EIB-TP (¶2.2.9).
- 3.1.11 Lastly, the risk of a protected interest being undermined must be reasonably foreseeable and not purely hypothetical (¶2.3.17) and, in order to fall within the scope of the exception at issue, must be serious (¶2.3.11 and 2.3.18). In this respect, the reasons put forward by the EIB in justifying refusal to the document at issue (¶1.2.2) are made in a general and abstract fashion without being supported by any detailed argument on the content of the document in question. In addition, at least one of the reasons put forward, i.e. that certain decisions mentioned in the minutes have already been superseded, provides further indication that wider access may be possible.

4 OUTCOME

On the basis of the above findings, the EIB-CM considers that the reasons put forward by the Bank do not justify the full refusal of access to the document at issue based on the decision-making exception, particularly in recognition of the existence of a right to partial access.

4.1 Recommendation

- 4.1.1 The EIB-CM recommends that the EIB re-assess, based on the specific content of the document at issue, the possibility of granting full or partial access to the document at issue³⁹. The EIB’s assessment outcome should be shared in correspondence with the complainant and should be adequately justified.
- 4.1.2 The EIB-CM expects the EIB to implement its recommendation within three months following issuance of this Conclusions Report.

EIB Complaints Mechanism

Available remedy: Complainants that are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman⁴⁰.

³⁹ As of the issuance of this report, all the deadlines associated with the action points contained in the document at issue have expired. The EIB-CM is aware of at least one topic of deliberation that did not materialise.

⁴⁰ Available at: <https://www.ombudsman.europa.eu/en/home>.