

**COMPLAINTS MECHANISM**

SG/A/2025/01

# **DISCLOSURE OF THE EIB REVIEW AND EVALUATION PROCESS REPORTS**

CONCLUSIONS REPORT

19 December 2025



SG/A/2025/01

# Disclosure of Review and Evaluation Process reports

## Conclusions Report

**Complaint confidential:** No

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Complainants

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Management Committee  
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**Disclaimer**

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism Division up to 8 September 2025. The conclusions are addressed solely to the EIB.

## The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism Division (hereafter: Complaints Mechanism or EIB-CM) 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, that is, 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 impact of the EIB's projects and operations.

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

**Please note:** Complainants that are not satisfied with the EIB reply to their complaint may file a complaint of maladministration against the EIB with the European Ombudsman<sup>1</sup>.

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<sup>1</sup> Available at: <https://www.ombudsman.europa.eu/en/home>. For more information see [EIB Group Complaints Mechanism policy dated November 2018](#), Section 4.5.

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## GLOSSARY

AC	Audit Committee
BBP	Best Banking Practice
BoD	Board of Directors
BoG	Board of Governors
CJEU	Court of Justice of the European Union
EBA	European Banking Authority
ECB	European Central Bank
EIB or Bank	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism
EIB-TP	EIB Group Transparency Policy
EO	European Ombudsman
EU	European Union
OLAF	European Anti-Fraud Office
REP	Review and Evaluation Process
SREP	Supervisory Review and Evaluation Process
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

## EXECUTIVE SUMMARY

This report concerns the refusal by the European Investment Bank (EIB) to provide access to its Review and Evaluation Process reports (hereafter: the REP reports).

On 5 March 2025, the EIB-CM received a complaint from a journalist (hereafter: the complainant) challenging the EIB's refusal to disclose the REP reports relating to the year 2019 onwards, to which the complainant had requested access in accordance with the EIB Group Transparency Policy (EIB-TP). The complainant alleges that the EIB's refusal to disclose the REP reports, communicated in an email of 27 January 2025 (hereafter: the EIB's reply), is in breach of the EIB-TP.

In support of the allegation, the complainant raises various arguments to demonstrate that the EIB would have incorrectly relied on several exceptions in the EIB-TP to justify its refusal, in particular the exception in Article 5.6, third bullet of the EIB-TP protecting the purpose of inspections; the exception in Article 5.7 of the EIB-TP protecting the EIB's decision-making process; the exception in Article 5.5 of the EIB-TP protecting commercial interests and the exception in Article 5.4.a, third bullet of the EIB-TP protecting the financial, monetary and economic policy of the European Union (EU) and its institutions. In addition, the complainant challenges the EIB's reliance on Article 5.3 of the EIB-TP concerning the compliance with EU laws and furthermore alleges a violation by the EIB of Article 5.10 of the EIB-TP on the partial disclosure of documents, and of Article 5.8 of the EIB-TP prescribing an obligation to assess a potential overriding public interest in the disclosure of the requested documents.

After reviewing the available information, the EIB Group Complaints Mechanism Division (EIB-CM) finds that the justification for the refusal of access provided by the EIB does not meet the standards of statement of reasons identified by the case-law of the CJEU in matters of public right of access to documents. For the EIB to confirm its conclusion that it may deny access to the REP reports under the EIB-TP, the reply to the complainant should be supported by a proper statement of grounds.

# 1 BACKGROUND

## 1.1 The REP reports concerned by the Complaint

- 1.1.1 The Complaint concerns the EIB's refusal to provide access to its Review and Evaluation Process reports (hereafter: REP reports) relating to the year 2019 and onward. The REP reports are issued annually by the EIB's Audit Committee (AC) to inform the EIB's Board of Governors (BoG) about the outcome of the EIB Review and Evaluation Process (hereafter: EIB REP), that is performed on the EIB as part of its alignment with Best Banking Practice (BBP).
- 1.1.2 The background of the issuance of the REP reports can be summarised as follows. Article 12 of the EIB Statute<sup>2</sup> provides that the EIB's AC shall verify the conformity of the EIB's activities to BBP. Compliance with this provision requires identifying which of the rules regarded as BBP should be applicable to the EIB, taking into account the EIB's unique features that distinguish it from commercial banks. To address this issue, following a proposal from the EIB's Board of Directors (BoD) and after consultation with the AC, on 23 July 2018 the EIB's BoG adopted the EIB Best Banking Practice Guiding Principles (hereafter: BBP Guiding Principles)<sup>3</sup>. These principles lay out the framework concerning the definition and application of BBP applicable to the EIB, with regard to governance and culture, prudential requirements, data and reporting, business and market conduct. They include principles and assessment criteria, as well as adaptation requirements for determining and adapting which BBP rules shall be applied to the EIB.
- 1.1.3 The Preamble to the BBP Guiding Principles notes that the EIB is neither subject to requirements for an authorisation nor supervised by any external supervisory banking authority<sup>4</sup>, and that the EIB is not formally subject to the supervisory review and evaluation process (SREP)<sup>5</sup>. Article 5.b.iv. of the BBP Guiding Principles provides that “[...] *The review and evaluation process applicable to the EIB shall reflect its specific features, taking into account its nature, policy mission, specific tasks and governance structure.*”<sup>6</sup>
- 1.1.4 By the resolution of 10 March 2021, the EIB's BoG adopted the EIB REP, and notably the EIB REP Guiding Principles<sup>7</sup>, that provide the general principles, rules and provisions regarding the governance, organisational structure and functioning of the EIB REP.
- 1.1.5 The EIB REP is carried out annually by the EIB's AC, supported by the EIB REP team. The EIB REP Examination Programme contains a standard minimum set of activities to be conducted by the EIB's AC and the REP team on a yearly basis and may include additional activities such as in-depth reviews or thematic examinations to monitor specific risks.<sup>8</sup>
- 1.1.6 The EIB REP outcome is reflected in the REP report, which provides an overall picture of the EIB's risk profile, a description of the findings detected and in-depth reviews, as well as recommendations on the measures proposed to mitigate the identified risks. The REP report is submitted, on an annual basis, by the EIB's AC to the EIB's BoG.<sup>9</sup> The EIB has classified the

<sup>2</sup> The [EIB Statute](#) is laid down in Protocol No 5 to the Treaties.

<sup>3</sup> [BBP Guiding Principles](#).

<sup>4</sup> The legal framework governing banking activities, banking supervision and the prudential rules for credit institutions is provided by [Directive 2013/36/EU](#) or Capital Requirements Directive IV (CRD) and by [Regulation \(EU\) 575/2013](#). This legal framework lays down, among others, the requirement for an authorisation to exercise the activity of credit institutions, the rules about prudential requirements for credit institutions and the review and evaluation of such requirements by the competent authorities.

<sup>5</sup> The Supervisory Review and Evaluation Process (SREP) is a set of procedures carried out annually by the prudential supervisory authorities to ensure that credit institutions have in place strategies, processes, capital and liquidity that are appropriate to the risks to which they are or might become exposed. The SREP is provided for by Articles 97 *et seq.* of [Directive 2013/36/EU](#).

<sup>6</sup> [BBP Guiding Principles](#), Section 5.b.iv.

<sup>7</sup> [EIB REP Guiding Principles](#).

<sup>8</sup> [EIB REP Guiding Principles](#), Article 5.1.

<sup>9</sup> [EIB REP Guiding Principles](#), Article 5.3.

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REP reports as strictly confidential internal documents that are not meant for publication and it provides that the AC shall summarise the main outcomes of the EIB REP in its public annual report, taking into account any business sensitive and confidential information.

## 1.2 The request for disclosure of the REP reports

1.2.1 On 3 May 2024, the complainant had requested the disclosure of two sets of EIB documents, using the dedicated e-mail address of the EIB Info Desk. The first set of requested documents were the surveys carried out among EIB staff; the second set of requested documents were the EIB's REP reports for the year 2019 onward. On 22 July 2024, the EIB made a partial disclosure to the complainant of the first set of requested documents, whereas no response was given by the Bank on the request about the REP reports.

1.2.2 On 27 January 2025, the complainant reiterated the request to have access to the REP reports. On the same day, the EIB replied and apologised for having overlooked that part of the complainant's request, refusing however to disclose the REP reports. The EIB justified its refusal on the following grounds:

- i. the REP reports are internal EIB documents produced to support the AC in the execution of its statutory role of verifying the EIB's compliance with BBP;
- ii. disclosure of the REP reports would undermine the protection of the purpose of inspections, which falls within the scope of the exception in Article 5.6, third bullet of the EIB-TP;
- iii. disclosure of the REP reports would seriously undermine the EIB's decision-making process, which is protected by the exception in Article 5.7 of the EIB-TP;
- iv. disclosure of the REP reports could undermine the protection of the public interest as regards the financial, monetary or economic policy of the EIB, which falls within the scope of the exception in Article 5.4 a), third bullet of the EIB-TP. This would happen due to the EIB's specific role and activities as described in Article 5.3 of the EIB-TP: since the REP reports contain financial, non-public information, as well as internal analyses on the activities of the EIB, their disclosure could affect the EIB's capacity to operate in the market;
- v. disclosing the REP reports would undermine the protection of the EIB's commercial interests, which is the subject of the exception in Article 5.5 of the EIB-TP.

In its reply, the EIB added that the main outcomes of the REP reports are summarised in the AC's public annual reports, which are published on the EIB's website, taking into account any sensitive and confidential information.

## 1.3 The Complaint

1.3.1 On 5 March 2025, the complainant lodged a complaint with the EIB-CM, challenging the EIB's refusal to grant access to the REP reports (see paragraphs 1.2.1 and 1.2.2 above), alleging that such refusal is in breach of the EIB-TP. In particular, the complainant raised the following arguments:

- Argument 1 *"Article 5.6 [of the EIB-TP] does not apply to the requested reports."*
- Argument 2 *"The EIB has not followed the requirement in Article 5.6 [of the EIB-TP] that disclosure of 'finalised investigations will be assessed in light of all the relevant circumstances of each case'."*
- Argument 3 *"The Bank has failed to show that disclosure would 'seriously undermine the EIB's decision-making process'."*
- Argument 4 *"The Bank incorrectly and vaguely relies on Article 5.3 [of the EIB-TP] regarding EU and national laws."*

- Argument 5 “*The EIB incorrectly said that disclosure could affect its ability to ‘operate on the market’.*”
- Argument 6 “*The EIB relies improperly on Art. 5.5 [of the EIB-TP], the exemption to protect ‘commercial interests’.*”
- Argument 7 “*The EIB seems not to have considered the possibility of redaction, in clear violation of its policy.*”
- Argument 8 “*Disclosure of the requested reports is in the public interest.*”

## 1.4 Work performed

- 1.4.1 On 17 March 2025, the EIB-CM acknowledged receipt of the complainant’s email of 5 March 2025. Subsequently, by emails of 25 March 2025 and of 10 April 2025 respectively, the EIB-CM informed the complainant of the case reference number as well as of the EIB-CM’s policy on confidentiality, and it confirmed that the scope of its inquiry would be the EIB’s refusal to disclose the REP reports for the year 2019 onward.
- 1.4.2 The EIB-CM conducted an initial meeting with the EIB services concerned. During the meeting and in subsequent exchanges, the EIB-CM gathered detailed information about the REP reports and the EIB’s reasons for refusing their disclosure.
- 1.4.3 Based on the review of all available information and documents, 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<sup>10</sup> tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB<sup>11</sup>. Maladministration means poor or failed administration; this 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<sup>12</sup>.
- 2.1.2 The Policy specifies that the EIB-CM reviews the EIB’s activities with a view to determining whether maladministration, that is attributable to the EIB, has taken place<sup>13</sup>.

### 2.2 EU Treaties and the EIB Statute

- 2.2.1 Article 1 of the Treaty on European Union (TEU)<sup>14</sup> states that, within the EU, decisions are taken as openly as possible and as closely as possible to the citizen.
- 2.2.2 Article 15(1) of the Treaty on the Functioning of the European Union (TFEU)<sup>15</sup> requires EU institutions and bodies to conduct their work as openly as possible in order to promote good governance and ensure the participation of civil society.
- 2.2.3 Article 15(3) TFEU stipulates that any citizen and any resident of the Union has a right of access to documents of the EU institutions and bodies, subject to certain conditions. The provision

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<sup>10</sup> The EIB Group Complaints Mechanism Policy available [here](#).

<sup>11</sup> Article 5.1.3 of the EIB Group Complaints Mechanism Policy.

<sup>12</sup> Article 3.1 of the EIB Group Complaints Mechanism Policy.

<sup>13</sup> Article 5.3.3 of the EIB Group Complaints Mechanism Policy.

<sup>14</sup> The Treaty on European Union available [here](#).

<sup>15</sup> The Treaty on the Functioning of the European Union available [here](#).

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clarifies however that the EIB, the Court of Justice of the European Union and the European Central Bank are subject to Article 15(3) TFEU only when exercising their administrative tasks.

- 2.2.4 In compliance with Article 308 TFEU, the EIB's Statute is laid down in a Protocol annexed to the Treaties, specifically in Protocol No 5<sup>16</sup>. Article 12 of the EIB's Statute defines the composition and role of the EIB's AC.<sup>17</sup>

## 2.3 The EIB Group Transparency Policy

- 2.3.1 The EIB Group Transparency Policy (EIB-TP or the Policy)<sup>18</sup> lays down the EIB's legal obligations in respect of the principle of openness and the right of public access to information and documents defined by Article 1 TEU and by Articles 15(1) and 15(3) TFEU.
- 2.3.2 The EIB-TP is steered by a number of guiding principles. In particular, and according to its Article 2.1, the EIB-TP is guided by the principle of openness and of the highest possible level of transparency. In addition, Article 2.5 of the EIB-TP refers to the principle of ensuring trust and safeguarding sensitive information, which are key for the EIB as a financial institution. The EIB-TP therefore ensures that information is protected from disclosure when disclosure would undermine the legitimate rights and interests of third parties and/or of the EIB, in line with the exceptions defined in Section 5 of the Policy.
- 2.3.3 Section 3 of the EIB-TP describes the EIB's institutional framework. Within that section, Article 3.2 provides that *"The EIB 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 EIB takes into account standards and practices applied by the banking and financial community, particularly in areas not covered directly by EU law."* In addition, Article 3.7 outlines the EIB's understanding of Article 15(3) TFEU, which is 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. [...]"*
- 2.3.4 Section 5 of the EIB-TP concerns the disclosure of information, which relies on two key elements: first, the presumption of disclosure, according to which all information and documents held by the EIB are subject to disclosure upon request<sup>19</sup>; and second, the exceptions to such presumption, which reflect certain pre-defined compelling reasons for non-disclosure.<sup>20</sup>
- 2.3.5 Article 5.3 of the EIB-TP outlines the interplay between the two above-described elements: *"While the EIB 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*

<sup>16</sup> Protocol (No 5) to the TFEU on the [EIB's Statute](#).

<sup>17</sup> [EIB's Statute](#), Article 12: *"1. A Committee consisting of six members, appointed on the grounds of their competence by the Board of Governors, shall verify that the activities of the Bank conform to best banking practice and shall be responsible for the auditing of its accounts. 2. The Committee referred to in paragraph 1 shall annually ascertain that the operations of the Bank have been conducted and its books kept in a proper manner. To this end, it shall verify that the Bank's operations have been carried out in compliance with the formalities and procedures laid down by this Statute and the Rules of Procedures. 3. The Committee [...] shall confirm that the financial statements, as well as any other financial information contained in the annual accounts drawn up by the Board of Directors, give a true and fair view of the financial position of the Bank in respect of its assets and liabilities, and of the results of its operations and its cash flows for the financial year under review. 4. The Rules of Procedure shall specify the qualifications required of the members of the Committee and lay down the terms and conditions for the Committee's activity."*

<sup>18</sup> The EIB Group Transparency Policy available [here](#). The version of the Policy in force at the time of the complaint is the one approved by the EIB Board of Directors (BoD) in November 2021 (available [here](#)). On 16 July 2025, the EIB BoD adopted an amendment to Articles 4.7 and 5.4 of the Policy, in relation to the protection of the public interest in public security, defence and military matters. Since such amendment has no impact on the provisions that are relevant for the present compliance review, this report will refer to the 2025 version of the EIB-TP that is currently in force.

<sup>19</sup> Article 5.1 of the EIB-TP

<sup>20</sup> Articles 5.3 to 5.7 of the EIB-TP.

*disclose information of the kind covered by the obligation of professional secrecy in accordance with Article 339 TFEU, [...]. National regulations and banking sector standards covering business contracts and market activity may also apply. There are therefore certain limits on the disclosure of information/documents. 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. In particular, under this Policy the EIB cannot disclose information in violation of European Union law such as the Market Abuse Regulation”.*

- 2.3.6 The exceptions in the EIB-TP that are relevant for the present review will be quoted and analysed in the dedicated sections of this report.
- 2.3.7 For the purposes of the present review, two additional provisions of general scope of the EIB-TP need to be highlighted: Article 5.10 of the EIB-TP, according to which if only parts of the document requested are covered by any of the exceptions, the remaining parts of the document shall be disclosed. And Article 5.25 of the EIB-TP, which establishes an obligation for the EIB, in case it is unable to divulge the information requested in order to safeguard the interests protected by the Policy, to state the reasons why such information cannot be provided.

### 3 FINDINGS

- 3.1.1 As already reported (see paragraph 1.3.1 above), the complainant has raised eight arguments in support of the claim that the EIB’s refusal to grant access to the REP reports is in breach of the EIB-TP. In view of ensuring a comprehensive and clear analysis, the EIB-CM has decided to structure the present report in sections corresponding to the various exceptions invoked by the EIB in its reply. Each section will address the relevant arguments raised by the complainant, as appropriate.

#### 3.2 Article 5.6 of the EIB-TP protecting the purpose of inspections, investigations and audits (Arguments 1 and 2)

- 3.2.1 In the reply to the complainant’s request for access to the REP reports, the EIB justified its refusal by invoking, among others, the exception laid down in Article 5.6, third bullet of the EIB-TP, which provides that access to information/documents shall be refused where disclosure would undermine the protection of the purpose of inspections, investigations and audits. Under Arguments 1 and 2, the complainant challenges the EIB’s reliance on this exception.
- 3.2.2 Firstly, the complainant alleges that Article 5.6, third bullet of the EIB-TP does not apply to the REP reports that were requested, since such reports do not qualify as inspections, investigations or audits as those terms are normally defined. Secondly, the complainant underlines to have asked for access to REP reports that were already finalised at the time of the request and that the EIB relied on the exception at hand without meeting the requirement according to which requests for disclosure of information/documents related to finalised investigations will be assessed in light of all the relevant circumstances of each case. For instance, according to the complainant, the time passed would make the disclosure of certain information in the REP reports less sensitive and the existence of a public interest in the disclosure of those reports should have been considered as well. Thirdly, the complainant finds that, contrary to the statement in the EIB’s reply, the AC’s annual reports do not provide a summary of the REP reports, but rather a summary of how the REP assessment was done. In the complainant’s view, the fact that the Bank intends to publish the main outcomes of the REP reports means that the Bank itself considers their disclosure as desirable. More in general, the complainant highlights how Article 5.6, third bullet of the EIB-TP introduces a presumption in favour of non-disclosure, but that such presumption is subject to being rebutted. The

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complainant argues that *“The Bank has not given specific reasons as to how disclosure ‘would undermine the protection of the purpose of inspections.’ ”*

- 3.2.3 In order to address the complainant’s arguments against the EIB’s reliance on the exception in Article 5.6, third bullet of the EIB-TP<sup>21</sup>, it is necessary to recall the precise wording of that exception. The first subparagraph of the provision introduces a general presumption of confidentiality, clarifying that *“Disclosure of information/documents related to inspections, investigations and audits shall be presumed to undermine the protection of the purpose of the inspections, investigations and audits.”*
- 3.2.4 According to the case-law of the Court of Justice of the European Union (CJEU),<sup>22</sup> general presumptions of confidentiality allow an institution or body to refuse access to documents pertaining to certain procedures, without being obliged to carry out a specific and individual examination of every document for which there is a request for disclosure. In this respect, the presumptions of confidentiality constitute an exception to the principle that the public should have the widest possible access to documents held by EU institutions and bodies and that each refusal of access should be concretely justified. The existence of such presumptions is based on the consideration that, for particular areas of EU law, granting access to the documents involved in certain procedures could jeopardise the objectives of such procedures and prevent their proper execution.
- 3.2.5 Notwithstanding the above, the case-law has specified that, where an institution considers that a general presumption of confidentiality is applicable, it has the obligation to identify or to draw up a list of the documents covered by such presumption.<sup>23</sup> In fact, the application of a general presumption of confidentiality and non-disclosure does not rule out the possibility for the requester of a specific document to rebut the presumption, by demonstrating that such document is not covered by the presumption, or that disclosure of that document does not jeopardise the objectives of the procedure it relates to, or that there is an overriding public interest in disclosure of the document concerned.<sup>24</sup>
- 3.2.6 Examining the complainant’s arguments in the light of these principles, the preliminary issue to address is whether the REP reports qualify as documents related to inspections, investigations and audits, which would thus be covered by the presumption of non-disclosure set out in the first subparagraph of Article 5.6, third bullet of the EIB-TP.
- 3.2.7 The EIB-TP does not define the notions of inspection, investigation and audit. Footnote 13 to Article 5.6, third bullet of the EIB-TP only clarifies that the provision *“applies to inspections, investigations and audits including compliance due diligence carried out by, or on behalf of, the relevant services of the EIB, notably the investigation, audit and compliance functions, as well as other relevant third parties (such as the European Anti-Fraud Office (OLAF), the European Public Prosecutor’s Office (EPPO) or national authorities).”*
- 3.2.8 The guidance that can be found in the case-law of the CJEU<sup>25</sup> regarding the notions at hand is limited. In the cases ruled by the EU courts, the exception to disclosure related to the protection

<sup>21</sup> The EIB Group Transparency Policy available [here](#).

<sup>22</sup> Judgment of the General Court of 6 October 2021, *Aeris Invest Sàrl v ECB*, case [T-827/17](#), ECLI:EU:T:2021:660, paragraphs 182-184 and the case-law cited (judgment confirmed in appeal).

<sup>23</sup> Judgment of the General Court of 28 May 2020, *Campbell v Commission*, case [T-701/18](#), paragraphs 41-46, ECLI:EU:T:2020:224.

<sup>24</sup> *Ibidem*, paragraph 198 and case-law cited.

<sup>25</sup> The case-law of the CJEU is based on [Regulation 1049/2001](#), regarding public access to European Parliament, Council and Commission documents. Article 4(2), third indent of that regulation also provides for an exception to disclosure to protect the purpose of inspections, investigations and audits. However, unlike the corresponding exception in Article 5.6, third bullet of the EIB-TP, the exception in Regulation 1049/2001 does not provide for a general presumption of non-disclosure for documents related to inspections, investigations and audits. It is a regular exception which can justify the refusal to give access to a document following a specific and individual assessment of the harm that disclosure of that document may cause to the interest protected by the exception. In any case, the terms inspection, investigation and audit are not defined in Regulation 1049/2001 either.

of the purpose of inspections, investigations and audits has been interpreted in the context of a large variety of procedures<sup>26</sup> and without specifically defining the meaning of those notions.

- 3.2.9 The EIB-CM notes that in its reply to the complainant, the EIB did not provide any explanations as to why the REP should be regarded as an inspection and the REP reports as documents related to inspections, covered by the presumption of non-disclosure. Moreover, the EIB did not include in its reply a list of the REP reports that were issued from 2019 onwards.
- 3.2.10 In conclusion, the EIB-CM does not object in abstract terms to the possibility for the EIB to refuse disclosure of the REP reports based on the presumption of confidentiality laid down by Article 5.6, third bullet of the EIB-TP for documents related to inspections. Yet, the EIB-CM finds that the EIB has not sufficiently explained in its reply to the complainant why the REP reports would fall within the scope of such presumption. In addition, the EIB-CM finds that, by not including a list of the REP reports issued from 2019 onwards, the presumption in question has not been applied in compliance with the requirements established by the case-law of the CJEU for general presumptions of non-disclosure.

### 3.3 Article 5.7 of the EIB-TP protecting the EIB's decision-making process (Argument 3)

- 3.3.1 Under Argument 3, the complainant challenges the fact that the EIB refused to give access to the REP reports by relying on the exception laid down in Article 5.7 of the EIB-TP<sup>27</sup> and by claiming that disclosure of said reports would seriously undermine the EIB's decision-making process. Besides noting that the EIB-TP does not define the meaning of 'seriously', the complainant observes that the rationale of the provision is to protect the internal free flow of opinions, whereas such protection should not apply to the facts underlying the decisions. In addition, the complainant considers that disclosing the decisions does not seriously undermine the decision-making process.
- 3.3.2 The EIB-CM notes that the exception in Article 5.7 of the EIB-TP protecting the EIB's decision-making process has the same wording and scope of the corresponding exception in Regulation 1049/2001<sup>28</sup>, which means that the case-law of the CJEU can be relied upon as guidance for the interpretation of the exception in the EIB-TP.
- 3.3.3 According to the settled case-law<sup>29</sup>, in order to apply the exception in question as a justification for refusing access to the requested documents, it must be shown that access to said

<sup>26</sup> For instance, the CJEU has considered justified relying on the exception in question to refuse access to documents related to investigations by the Commission of a possible contravention of EU law by a Member State which might lead to the initiation of infringement proceedings (judgment of the General Court of 13 September 2013, *ClientEarth v Commission*, case [T-111/11](#), ECLI:EU:T:2013:482, confirmed on this point in the appeal judgment of the Court of Justice of 16 July 2015, *ClientEarth v Commission*, case [C-612/13 P](#), ECLI:EU:C:2015:486) or which have in fact led to the initiation of such proceedings (judgment of the General Court of 9 September 2011, *LPN v Commission*, case [T-29/08](#), ECLI:EU:T:2011:448). Moreover, the use of the exception has been considered justified in the context of investigations by the Commission into the compatibility of State aids with the single market (judgment of the Court of Justice of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, case [C-139/07 P](#), ECLI:EU:C:2010:376) and in the context of the investigations carried out by the European Anti-Fraud Office (OLAF) (judgment of the General Court of 26 May 2016, *International Management Group v Commission*, case [T-110/15](#), ECLI:EU:T:2016:322).

<sup>27</sup> Article 5.7 of the EIB-TP reads as follows:

*“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 organ 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.”*

<sup>28</sup> Article 4(3) of [Regulation 1049/2001](#), regarding public access to European Parliament, Council and Commission documents.

<sup>29</sup> See among many, judgment of the General Court of 14 September 2022, *Pollinis France v Commission*, case [T-371/20](#) and [T-554/20](#), ECLI:EU:T:2022:556, paragraphs 40-42 and the case-law cited (confirmed in appeal by the

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documents is likely to undermine specifically and actually the administration's decision-making process and that such risk is reasonably foreseeable and not purely hypothetical. Moreover, in order to fall within the scope of the exception, the risk of undermining the decision-making process must be serious, in the sense that the disclosure of the requested documents would have a substantial impact on such process. The assessment of that serious nature depends on all the circumstances of the case. It is not required that the administration provides evidence to establish the existence of such a risk, but in the decision refusing the disclosure there should be tangible elements and objective reasons from which it can be inferred that the risk is likely to exist.

- 3.3.4 The case-law has also clarified the specific elements that justify relying on the exception protecting the decision-making process after the decision has been taken.<sup>30</sup> The wording of the relevant provision provides that, in the period after the decision is taken, the exception covers only documents containing opinions for internal use as part of deliberations and preliminary consultations within the administration concerned<sup>31</sup>. The CJEU has found that, to validly rely on the exception after the decision is adopted, the administration has to assess whether the disclosure of the opinions for internal use is likely to seriously undermine its decision-making process. In particular, it has to explain the specific reasons why it considers that the closure of the procedure does not exclude that refusal of access may remain justified having regard to the risk that the exception is meant to prevent.
- 3.3.5 Lastly, it results from the case-law<sup>32</sup> that, if the administration applies the exception at hand, it is for that administration to weigh the particular interest of protecting its decision-making process through the non-disclosure of the requested documents against the public interest in the documents being made accessible, having regard to the advantages of increased openness and transparency. According to the case-law, such advantages are due to the fact that public access to documents enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to citizens in a democratic system.
- 3.3.6 The EIB-CM observes at the outset that, in its reply to the complainant, the EIB did not specify whether it considers that the REP reports fall under the first or second paragraph of Article 5.7 of the EIB-TP, that is whether they are regarded as documents drawn up by the EIB for internal use and related to a matter where the decision has not yet been taken by the relevant body of the EIB, or rather as documents containing opinions for internal use as part of deliberations and preliminary consultations within the EIB in relation to decisions that have already been taken. Also, the EIB's reply does not identify with precision the decisions or deliberations to which the REP reports would refer. The clarity on these points is important for two reasons: firstly, because it is only for documents containing opinions for internal use that the exception in question can be relied upon even after the decision has been taken; and secondly, because the complainant's Argument 3 (referring to facts, opinions and decisions, see paragraph 3.3.1) suggests that the very nature of the REP reports is not fully understood.
- 3.3.7 In any case, the EIB's reply relies on the exception in Article 5.7 of the EIB-TP without providing any explanations as to the reasons why the disclosure of the REP reports would create a reasonably foreseeable risk of undermining specifically, actually and seriously the EIB's

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judgment of the Court of Justice of 16 January 2025, *Commission v Pollinis France*, case [C-726/22 P](#), ECLI:EU:C:2025:17).

<sup>30</sup> Judgment of the Court of Justice of 21 July 2011, *Sweden v MyTravel Group and Commission*, case [506/08 P](#), ECLI:EU:C:2011:496, paragraphs 78-82 and the case-law cited.

<sup>31</sup> The only minor difference between the wording of Article 5.7, second paragraph, of the EIB-TP and of Article 4(3), second paragraph of Regulation 1049/2001 is that the latter only refers to "preliminary consultations within the institution concerned", whilst the former makes a broader reference to "preliminary consultations within the EIB or with Member States/other stakeholders".

<sup>32</sup> Judgment of the General Court of 18 September 2015, *Miettinen v Council*, case [T-395/13](#), ECLI:EU:T:2015:648, paragraph 20 and the case-law cited.

decision-making process, and why that risk would continue to exist even after the relevant decision has been taken.

- 3.3.8 The EIB-CM takes note of the absence of explanations on those aspects and that the provided justification does not abide by the standards of statement of reasons that the EIB's refusal should meet.

### 3.4 Reference to Article 5.3 of the EIB-TP on the EIB's confidentiality duties pursuant to EU law (Argument 4)

- 3.4.1 Under Argument 4, the complainant criticises the reference made in Footnote 2 of the EIB's reply to Article 5.3 of the EIB-TP: such reference is interpreted as a claim by the EIB that disclosing the REP reports would violate provisions of EU law or of national law, without however any clarification by the Bank on which would be those provisions prohibiting the disclosure.

- 3.4.2 Article 5.3 of the EIB-TP, quoted in full in paragraph 2.3.5 above, is the opening provision of the Section "Exceptions" in the EIB-TP but does not provide for an exception in the strict sense. It rather lays out several constraints of general nature to which the EIB is subject, and which limit its possibility to fully adhere to the presumption of disclosure and transparency. Such constraints refer to (i) the EIB's duty to respect confidentiality in compliance with EU law, including the one deriving from the obligation of professional secrecy and from data protection obligations; (ii) national regulations and banking sector standards; (iii) the regard due to the EIB's specific role and activities and the need to protect the confidentiality of its relationship with clients and other counterparts.

- 3.4.3 According to the clarifications provided by the EIB's services during the review of the complaint, the reference in the EIB's reply to Article 5.3 of the EIB-TP is made in connection with the need to take into consideration the EIB's specific role, activities and capacity to operate on the market, and in connection with the need to protect the EIB's financial, monetary and economic policy, as well as its commercial interests. The EIB's services clarified moreover that the reference is to Directive 2013/36<sup>33</sup>, laying down, among others, the rules about the prudential supervision of credit institutions, and applicable to the EIB to the extent determined under the BBP framework. Article 53(1) of the directive provides for a specific obligation of professional secrecy for all persons involved in prudential supervision tasks and moreover prescribes that "*Confidential information which such persons, auditors or experts receive in the course of their duties may be disclosed only in summary or aggregate form [...]*".

- 3.4.4 The EIB-CM considers that the absence of explanations in the EIB's reply about the legal constraints, deriving from Directive 2013/36 or from other provisions, prohibiting the disclosure of the REP reports does not enable the complainant to understand on which grounds the EIB has refused access to such reports and does not abide by the obligation incumbent on the EIB to state the reasons for its decisions.

- 3.4.5 In addition, and regardless of Directive 2013/36 being applicable to the EIB to the extent determined under the BBP framework, the EIB-CM considers that the EIB's regulatory framework should be amended to clarify the disclosure rules applicable to the REP reports. On the one hand, the EIB-TP does not contain any reference to the REP reports and to their special

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<sup>33</sup> [Directive 2013/36/EU](#) or Capital Requirements Directive IV (CRD).

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regime in terms of public access to documents.<sup>34</sup> On the other hand, the EIB REP Guiding Principles<sup>35</sup> do not address in any way the matter of the disclosure of the REP reports either.

### 3.5 Article 5.4.a, third bullet of the EIB-TP protecting the EIB's financial, monetary and economic policy (Argument 5)

- 3.5.1 Under Argument 5, the complainant considers unfounded and implausible the explanation provided by the EIB in its reply according to which disclosure of the REP reports would affect the EIB's capacity to operate in the market and thus undermine the protection of the public interest as regards the financial, monetary or economic policy of the EIB. The complainant challenges the EIB's reliance on the exception in Article 5.4.a, third bullet of the EIB-TP<sup>36</sup>, arguing that the disclosure of the REP reports cannot have a negative impact on EU economic policy. On the contrary, according to the complainant, it would be beneficial for the EU and its economic policy if the REP reports identified shortcomings and proposed improvements to the EIB.
- 3.5.2 Before examining the EIB's reliance on the exception in Article 5.4.a, third bullet of the EIB-TP, it is necessary to rectify the complainant's reading of this part of the EIB's reply, which did not invoke the protection of the economic policy of the EU, but rather of the financial, monetary and economic policy of the EIB. In this connection, footnote 2 to the EIB's reply refers to Article 5.3 of the EIB-TP (quoted above in paragraph 2.3.5) which, among other things, prescribes that in applying the exceptions to disclosure the EIB shall have due regard for its specific role and activities, and the need to protect its legitimate interests.
- 3.5.3 Following the line of reasoning applied for other exceptions, the EIB-CM assessed the EIB's reliance on the exception in Article 5.4.a, third bullet, of the EIB-TP in light of the principles established by the case-law of the CJEU when interpreting two provisions which both lay down a nearly identical exception: on the one hand, Article 4(1)(a), fourth indent of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>37</sup>; on the other hand, Article 4(1)(a), second indent of Decision 2004/258/EC on public access to documents of the ECB<sup>38</sup>.
- 3.5.4 With regard to the exception related to the protection of the financial, monetary or economic policy of the Union, the CJEU has underlined that the institutions that avail themselves of this exception enjoy wide discretion for the purpose of determining whether the public interest as regards the financial, monetary or economic policy of the Union or of a Member State might be undermined by the disclosure of the requested documents. That broad discretion is recognised based on the consideration that, given the particularly sensitive and essential nature of the interests protected by the exception at hand, the decision about the disclosure of the relevant documents is complex and must be adopted by the relevant institution exercising particular care.

<sup>34</sup> As a comparison, it is noted that in [Decision 2004/258/EC](#) on public access to European Central Bank (ECB) documents, Article 4(1)(a) provides for a specific absolute exception according to which *"The ECB shall refuse access to a document where disclosure would undermine the protection of [...] the public interest as regards [...] the purpose of supervisory inspections."*

<sup>35</sup> [EIB REP Guiding Principles](#).

<sup>36</sup> The EIB Group Transparency Policy available [here](#). Article 5.4.a, third bullet of the EIB-TP reads as follows: *"Notably, access shall be refused where disclosure would undermine the protection of:*  
*a. the public interest, as regards: [...] the financial, monetary or economic policy of the EU, its institutions and bodies or a Member State; [...]"*

<sup>37</sup> [Regulation 1049/2001](#), regarding public access to European Parliament, Council and Commission documents. Article 4(1)(a), fourth indent of the regulation provides that *"The institutions shall refuse access to a document where disclosure would undermine the protection of (a) the public interest as regards [...] the financial, monetary or economic policy of the Community or a Member State;"*

<sup>38</sup> Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents ([Decision 2004/258/EC](#)). Article 4(1)(a), second indent thereof provides that: *"The ECB shall refuse access to a document where disclosure would undermine the protection of (a) the public interest as regards [...] the financial, monetary or economic policy of the Community or a Member State;"*

In addition, such broad discretion is justified by the fact that the notions of financial, monetary or economic policy are very general.<sup>39</sup>

- 3.5.5 According to the case-law, the consequence of recognising such broad discretion is that, when it comes to the decisions refusing disclosure of documents based on the exception at hand, the review of legality exercised by the EU courts has a limited scope, and will consist in verifying whether the procedural rules and the obligation to state reasons have been complied with, whether the facts have been accurately stated, and whether there has been a manifest error of assessment or a misuse of powers.<sup>40</sup>
- 3.5.6 The ulterior consequence of the institution's broad discretion in applying this exception is that the institution's compliance with its obligation to provide a statement of reasons takes on even more fundamental importance. Indeed, it is only through the statement of reasons that the EU courts can verify the factual and legal elements upon which the institution's exercise of such discretion depends. The statement of reasons can be provided by means of considerations of general nature, or of references to the hypothetical behaviour in which market participants might engage following disclosure of the requested documents, so that the institution is not forced to reveal information which it seeks to protect under the exception.<sup>41</sup>
- 3.5.7 The EIB-CM notes that, in its reply to the complainant, the EIB explains the harm that disclosure of the REP reports could cause to its capacity to operate in the market, and thus to its financial, monetary or economic policy, only by stating that the REP reports are internal documents containing financial and non-public information, as well as internal analyses on the activities of the EIB.
- 3.5.8 In the EIB-CM's view, such explanations are not sufficient to comply with the standards of statement of reasons required by the case-law when relying on the exception at hand. The EIB's broad discretion in determining whether the public interest protected by the exception in Article 5.4.a, third bullet of the EIB-TP could be affected by the disclosure of the REP reports is not called into question. Nor is the EIB expected to comply with its duty to state the reasons for the non-disclosure decision by revealing the content of the requested REP reports. Nevertheless, it does not seem that the complainant has received sufficient details to understand why such reports fall within the scope of the exception in Article 5.4.a, third bullet of the EIB-TP, and let alone to understand why the disclosure of the REP reports undermines the effectiveness of the EIB's capacity to operate in the market and of its financial, monetary or economic policy.

## 3.6 Article 5.5 of the EIB-TP protecting commercial interests (Argument 6)

- 3.6.1 Under Argument 6, the complainant puts forward that, in its reply refusing access to the REP reports, the EIB improperly relies on the exception in Article 5.5 of the EIB-TP<sup>42</sup>, which allows the EIB to refuse access to information/documents where the disclosure would undermine the protection of commercial interests of a natural or legal person. The complainant, quoting also

<sup>39</sup> See, among others, judgment of the General Court of 6 October 2021, *Aeris Invest Sàrl v ECB*, case [T-827/17](#), ECLI:EU:T:2021:660, paragraphs 157-160 and the case-law cited (judgment confirmed in appeal).

<sup>40</sup> *Ibidem*, paragraph 161 and the case-law cited. See also judgment of the General Court of 29 November 2012, *Thesing and Bloomberg Finance v ECB*, case [T-590/10](#), ECLI:EU:T:2012:635, paragraph 43 (judgment confirmed in appeal).

<sup>41</sup> Judgment of the General Court of 4 June 2015, *Versorgungswerk der Zahnärztekammer Schleswig-Holstein v ECB*, [T-376/13](#), ECLI:EU:T:2015:361, paragraphs 54-55 and the case-law cited.

<sup>42</sup> The EIB Group Transparency Policy available [here](#). Article 5.5 of the EIB-TP reads as follows: "Access to information/documents shall also be refused where disclosure would undermine the protection of commercial interests of a natural or legal person.

*The following non-exhaustive examples illustrate common cases of commercial interests:*

- *Business, financial, proprietary or other non-public information/documents created or received by the EIB;*
- *Information/documents relating to negotiations, legal documentation and related correspondence;*
- *Information/documents covered by a confidentiality agreement or in relation to which a third party has legitimate expectations that they would not be disclosed."*

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Footnote 12 to the mentioned provision which defines the notion of commercial interests, submits that the focus of this exception is on the EIB's interactions with third parties, whilst the REP reports are primarily about the EIB and its alignment with the BBP.

- 3.6.2 An exception regarding the protection of the commercial interests of a natural or legal person is present also in the already mentioned Regulation 1049/2001 on public access to European Parliament, Council and Commission documents<sup>43</sup> and in Decision 2004/258/EC on public access to documents of the ECB<sup>44</sup>. The exception in Article 5.5 of the EIB-TP being nearly identical, the EIB-CM has assessed the EIB's reliance on the exception at hand to refuse access to the REP reports in light of the case-law of the CJEU on the mentioned provisions of Regulation 1049/2001 and of Decision 2004/258/EC.
- 3.6.3 The well-established case-law of the CJEU<sup>45</sup> has made a number of clear statements regarding the scope and interpretation of the exception protecting commercial interests. First of all, the exception can be applied regardless of the degree of seriousness of the interference with the protected commercial interests. In addition, the case-law notes that the notion of commercial interests is not defined; however, it is not possible to regard all information concerning a legal person and its business relations as requiring the protection which must be guaranteed to commercial interests, as a similar approach would jeopardise the general principle of giving the public the widest possible access to documents held by the institutions.
- 3.6.4 It also results from the case-law<sup>46</sup> that the correct application of the exception relating to the protection of the commercial interests of a natural or legal person requires a twofold verification: on the one hand, it must be ascertained whether the documents for which the access is denied fall within the scope of the exception. This usually results from the economic, financial or technical information that can be found in the documents. On the other hand, the administration relying on the exception must examine and explain how the disclosure of the documents concerned would specifically and actually undermine the commercial interests protected by the exception, demonstrating that such risk is reasonably foreseeable and not purely hypothetical. The examination which the institution must undertake in order to apply an exception must be apparent from the reasons for the decision.
- 3.6.5 As a preliminary remark, the EIB-CM observes that Article 5.5 of the EIB-TP does not explicitly refer to the protection of the EIB's commercial interests, but to the protection of the commercial interests of a natural or legal person. Therefore, when relying on the exception at hand to refuse access to the REP reports, the EIB should have clarified to the complainant the reasoning based on which it considers that such exception also protects the EIB's own commercial interests.
- 3.6.6 In addition, and as is the case for other of the exceptions invoked in the EIB's reply, the EIB-CM finds that the EIB has relied on the exception in Article 5.5 of the EIB-TP without providing sufficient explanations that would allow the complainant to understand, firstly, why the REP reports fall under the scope of that exception and, secondly, why their disclosure would

<sup>43</sup> [Regulation 1049/2001](#), regarding public access to European Parliament, Council and Commission documents. Article 4(2), first indent of the regulation provides that *"The institutions shall refuse access to a document where disclosure would undermine the protection of: - commercial interests of a natural or legal person, including intellectual property, [...]"*.

<sup>44</sup> Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents ([Decision 2004/258/EC](#)). Article 4(2), first indent thereof provides that: *"The ECB shall refuse access to a document where disclosure would undermine the protection of: - the commercial interests of a natural or legal person, including intellectual property, [...]"*.

<sup>45</sup> Exhaustively recalled in the judgment of the General Court of 17 July 2024, *Auken a.o. v Commission*, case [T-689/21](#), ECLI:EU:T:2024:476, paragraphs 30-36 and the case-law cited (the judgment is under appeal, but not on this part).

<sup>46</sup> Judgment of the General Court of 29 January 2013, *Cosepuri v EFSA*, joined cases [T-339/10 and T-532/10](#), ECLI:EU:T:2013:38, paragraphs 95-96.

specifically and actually undermine the EIB's commercial interests.<sup>47</sup> Such approach cannot be regarded as compliant with the requirements established by the case-law.

### 3.7 Article 5.10 of the EIB-TP on the possibility of partial disclosure (Argument 7)

- 3.7.1 The complainant's Argument 7 focuses on the failure by the EIB to apply Article 5.10 of the EIB-TP<sup>48</sup>, in view of assessing whether it could give partial access to the REP reports instead of denying them in full. According to the complainant, it is unlikely that the entirety of the REP reports is covered by the exceptions invoked in the EIB's reply; only business sensitive and/or confidential information should be withheld, as the EIB itself indirectly acknowledges when it announces that such information is left out of the public summaries of the REP reports.
- 3.7.2 In the assessment of this argument, the EIB-CM is entitled to follow the guidance provided by the case-law of the CJEU on the interpretation of certain provisions that have the same wording and scope of Article 5.10 of the EIB-TP, notably Article 4(6) of Regulation 1049/2001 on public access to European Parliament, Council and Commission documents<sup>49</sup> and Article 4(5) of Decision 2004/258/EC on public access to documents of the ECB<sup>50</sup>.
- 3.7.3 The case-law<sup>51</sup> has clarified that, when assessing a request for access to a document which may be protected by an exception to disclosure, the institution is required to consider whether it is appropriate to grant partial access to the requested document and to limit any refusal to the information covered by the relevant exception. Such requirement is an expression of the principle of proportionality, whereby the institution must grant partial access if the aim pursued by that institution in refusing access to a document may be achieved by merely blanking out the passages which might harm the interest to be protected.
- 3.7.4 A derogation from the described requirement has been identified by the case-law for documents that are covered by a general presumption of non-disclosure<sup>52</sup>: in case of requests for access concerning such type of documents, there is no need to carry-out an assessment in view of a potential partial disclosure (and provided that there is no overriding public interest in their disclosure – on this more below). As a matter of fact, it is considered that in those circumstances the documents fall outside the scope of the obligation to disclose their content, in full or in part.
- 3.7.5 The EIB-CM has assessed the complainant's Argument 7 in the light of the above case-law and of its own findings about the use made by the EIB of various exceptions in the EIB-TP to justify its refusal to disclose the REP reports.

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<sup>47</sup> In its reply, the EIB limited itself to describing the REP reports as “*internal EIB documents produced to support the Audit Committee in the execution of their statutory role of verifying EIB compliance with best banking practice*” and as “*internal documents containing financial and non-public information, as well as internal analyses on the activities of the EIB*”. The EIB-CM notes incidentally that these exact same elements served as a basis for the EIB to invoke the exception regarding the protection of the EIB's financial, monetary or economic policy laid down in Article 5.4.a, third bullet of the EIB-TP (see paragraph 3.5.7), making it impossible for the complainant – and for any reader for that matter – to understand how the disclosure of the REP reports would undermine the interests protected under the two different exceptions.

<sup>48</sup> The EIB Group Transparency Policy available [here](#). Article 5.10 of the EIB-TP reads as follows: “*If only parts of the document requested are covered by any of the exceptions, the remaining parts of the document shall be disclosed.*”

<sup>49</sup> [Regulation 1049/2001](#), regarding public access to European Parliament, Council and Commission documents. Article 4(6) of the regulation provides that “*If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.*”

<sup>50</sup> Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents ([Decision 2004/258/EC](#)). Article 4(5) thereof provides that: “*If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.*”

<sup>51</sup> Judgment of the General Court of 4 May 2012, *In 't Veld v Council*, case [T-529/09](#), ECLI:EU:T:2012:215, paragraphs 104-106 and the case-law cited (judgment confirmed in appeal).

<sup>52</sup> Judgment of the General Court of 7 October 2014, *Schenker AG v Commission*, case [T-534/11](#), ECLI:EU:T:2014:854, paragraph 108 and the case-law cited.

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- 3.7.6 As a preliminary point, the EIB-CM underlines that, due to the absence of an exhaustive statement of reasons about the various exceptions invoked in the EIB's reply, it is not possible to determine whether the EIB was or was not required to assess the possibility of granting partial access to the REP reports. In particular, should the REP reports benefit from the presumption of non-disclosure laid down by Article 5.6, third bullet of the EIB-TP for documents related to inspections, as the EIB claims in its reply<sup>53</sup>, then according to the case-law there would be no need for the EIB to engage in an assessment about the possibility to grant partial access to the REP reports. If, on the contrary, it resulted that the REP reports could only be covered by one of the other exceptions invoked in the Bank's reply<sup>54</sup>, then the EIB would be required to carry out such assessment, because the REP reports would not be covered by a presumption of non-disclosure.
- 3.7.7 In any case, the EIB-CM notes that the EIB's reply does not make it possible to establish whether the EIB made an assessment in accordance with Article 5.10 of the EIB-TP in view of deciding whether the complainant could be granted partial access to the REP reports, following a redaction of the information that needed to be protected in accordance with the exceptions of the EIB-TP invoked by the Bank. Such approach is not in line with the principles established by the case-law and does not abide by Article 5.10 of the EIB-TP.

### 3.8 Article 5.8 of the EIB-TP on the potential overriding public interest in disclosure (Argument 8)

- 3.8.1 The complainant's Argument 8 alleges that the EIB, when applying certain exceptions to justify its refusal to disclose the REP reports, should have balanced the interest protected by the relevant exception against the public interest in the disclosure of such reports. According to the complainant, there is an overriding public interest in the disclosure of the REP reports because such documents are key to the EIB's accountability as a publicly-funded institution. The complainant argues that, in the public debate, the REP adopted by the EIB is seen as an inadequate replacement of the external banking supervision and that it is only by having access to the REP reports that the public can scrutinise whether the EIB is actually complying with Best Banking Practice.
- 3.8.2 The EIB-CM confirms at the outset that some of the exceptions invoked by the EIB in its reply are known as "balanced exceptions", which means that they apply unless there is an overriding public interest in disclosure. In accordance with Article 5.8 of the EIB-TP, this is the case for the exception protecting the purpose of inspections laid down by Article 5.6, third bullet of the EIB-TP, for the exception protecting the EIB's decision-making process laid down by Article 5.7 of the EIB-TP and for the exception protecting commercial interests laid down by Article 5.5 of the EIB-TP.
- 3.8.3 The concept of a potential public interest, which may override the interests protected by certain exceptions to disclosure, is present also in Regulation 1049/2001, and this allows the EIB-CM to draw guidance from the case-law of the CJEU for the assessment of the complainant's Argument 8.
- 3.8.4 First of all, the case-law has clarified how the balancing exercise between the different interests at stake should be carried out: *"it is necessary to weigh, on the one hand, the particular interest to be protected by non-disclosure of the document concerned against, on the other hand, inter alia, the public interest in the document being made accessible, having regard to the advantages resulting from increased openness [...], in so far as it enables citizens to participate more closely*

<sup>53</sup> See paragraphs 3.2.9 and 3.2.10 above about the failure by the EIB to provide explanations as to why the REP reports constitute documents related to inspections and why it is important to keep them confidential even after the REP is finalised.

<sup>54</sup> For instance, the exception in Article 5.7 of the EIB-TP protecting the EIB's decision-making process, or the exception in Article 5.4.a of EIB-TP protecting the financial, monetary or economic policy of the EIB, or again the exception in Article 5.5 of the EIB-TP protecting the EIB's commercial interests.

*in the decision making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system.*<sup>55</sup>

- 3.8.5 For an overriding public interest in the disclosure of the requested documents to be established, general considerations are not considered sufficient: “[...] access requires that the principle of transparency should, in the given situation, raise an issue of particularly pressing concern which prevails over the reasons justifying the refusal to disclose the documents in question [...]”.<sup>56</sup>
- 3.8.6 It does not seem from the EIB’s reply, that the described balancing exercise has taken place when the EIB invoked the exceptions in Articles 5.6, third bullet, 5.7 and 5.5 of the EIB-TP, and this represents an additional shortcoming in the fulfilment by the EIB of its duty to provide an adequate statement of reasons for its decision to refuse access to the REP reports.

## 4 CONCLUSIONS AND OUTCOME

- 4.1.1 After carrying out its compliance review on the complaint, the EIB-CM draws the following conclusions and makes a recommendation to the EIB.
- 4.1.2 The EIB refused access to the REP reports relying on different exceptions of the EIB-TP. The breach of the EIB-TP results from the EIB not meeting the standards of statement of reasons identified by the case-law of the CJEU in matters of public right of access to documents<sup>57</sup>. When relying on exceptions of the EIB-TP to refuse access to the REP Reports, the EIB needs to provide adequate explanations allowing the complainant to understand whether the REP reports fall within the scope of those exceptions and whether, therefore, their disclosure would undermine the protection of the specific interests protected by the exceptions.
- 4.1.3 In particular, with reference to the EIB’s reliance on the presumption of non-disclosure for documents relating to inspections (Article 5.6, third bullet of the EIB-TP), the EIB should have explained why the REP reports qualify as documents related to inspections, and it should have identified in its reply the list of REP reports that it considered covered by the presumption of non-disclosure. By not providing those explanations, the EIB has undermined the possibility for the complainant to exercise the right to rebut the presumption of confidentiality for the REP reports.
- 4.1.4 Concerning the balanced exceptions in the EIB-TP invoked by the EIB in its reply (the already mentioned Article 5.6, third bullet, protecting the purpose of inspections; Article 5.5 protecting the EIB’s commercial interests; Article 5.7 protecting the EIB’s decision-making process), the EIB has not provided any statement of reasons that would demonstrate that the application of those exceptions has been weighted against a potential overriding public interest in the disclosure of the REP reports.
- 4.1.5 Lastly, the EIB’s reply does not show whether the EIB, when invoking the exceptions laid down in Articles 5.5 and 5.7 of the EIB-TP, has assessed the possibility to give to the complainant partial access to the REP reports.
- 4.1.6 The EIB-CM therefore recommends that the EIB review the complainant’s request in the light of the case-law recalled in this report and provide to the complainant a new reply about the disclosure of the REP reports. For the EIB to deny access to the REP reports under the EIB-

<sup>55</sup> Judgment of the General Court of 17 July 2024, *Auken a.o. v Commission*, case [T-689/21](#), ECLI:EU:T:2024:476, paragraphs 211-212 and the case-law cited.

<sup>56</sup> *Ibidem*, paragraphs 213-214 and the case-law cited.

<sup>57</sup> The case-law of the CJEU in matters of right of access to documents refers to the provisions of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents. The EIB is not subject to such regulation and the rules about the access to the EIB’s documents/information are laid down in the EIB-TP. All references in this Conclusions Report to the case-law of the CJEU must be understood as encompassing only the findings of the CJEU relating to provisions of Regulation 1049/2001 that are present, with an identical or nearly identical wording, also in the EIB-TP.

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TP, the reply to the complainant should be supported by a proper statement of grounds. The EIB-CM expects the EIB to implement this recommendation by the end of March 2026.



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