

Comments of CSO participants from Central Asia and Caucasus to the draft of Policy on Public Information of the Asian Infrastructure Investment Bank

The Asian Infrastructure Investment Bank (AIIB) indicates its commitment to transparency in the adoption of public information policies.

In January 2018, AIIB released a draft public information policy. Having considered this draft of the PPI, it will be noted that there are some provisions need to be reviewed.

The draft of PPI is far from a document that would fully disclose the methodology for ensuring transparency and access to AIIB information, although the goal assumes strict adherence to the rules for ensuring transparency of information.

Unclear and inadequate summary of the main points in the draft of PPI, an indication of the principles without concrete commitments for the implementation of and to ensure transparency and access to information AIIB - fundamentally undermine the policy objective.

Regulation on information disclosure should include a clear list of documents in which AIIB may disclose information, as well as the time frame for such disclosure and the basic steps for functional events (for example, approval of the project's Board of Directors), and in particular, further actions after the event. Regulations on the procedure for requests should be radically revised to provide a clear basis for the request. The further processing also requires a system of appeals, with the inclusion of an independent complaints mechanism. In the proposed policy, there is no clear definition of what information is public and which is not. In the draft of the policy, many provisions are very

broadly regulated only by the side of AIIB, giving extensive powers in most cases, refusing to provide information. Such provisions are inconsistent with the obligation to maximize the disclosure of information. In addition, it should be noted that, in general, the text of the "Policy of the Asian Bank for Infrastructure Investment in Public Information" project does not contain the consistency and consistency of provisions, the very contradictory nature of most articles to each other, and the protection of the client who received credit funds.

Document PPI	Comments	Working group suggestions
1.5. This Policy revokes and replaces the Public Information Interim Policy adopted by the Board of Directors in January 2016.	A reference is made to the "Public Information Interim Policy " which is not published in the open sources and there is no access to these materials. A link to the "Public Information Review" is provided, which is not published in the open sources and there is no access to these materials.	It is necessary to indicate the source to the "Public Information Interim Policy".
1.6. This Policy is adopted pursuant to the President's Review of the Public Information Interim Policy to the Board of Directors of [Month] 2018 detailing and analyzing the	Represented by the reference to "Review of the Public Information ", which is not published in the media and do	It is necessary to indicate the source to the "Review of the Public Information ".

Bank's early public disclosure experience, strategy, benchmarking and consultation.	not have access to these materials.	
3.1.2. <i>Event-based Disclosure</i> . This Policy recognizes functional events as the basis for the required proactive public disclosure of information by the Bank.	Functional events are the main components of proactive public disclosure of information.	It is necessary to define the «functional events»?
3.1.3. <i>Exceptions to Disclosure</i> . This Policy recognizes there are multiple legitimate interests that shall be afforded protection by this Policy.	Legitimate interests are grounds for exclusion from disclosure, but there is no detailed explanation of the concept itself, which creates opportunities for abuse.	It is necessary to describe what are legitimate interests that should be protected from this policy.
3.1.4. <i>Positive and Negative Overrides</i> . This Policy recognizes that in limited circumstances, the balancing of competing legitimate interests may cause a Disclosure Requirement or an Exception to Disclosure to be overridden.	It is necessary to define the concept of " limited circumstances ", since it is not specified what is meant by this. Criteria should be established for disclosure or deletion from disclosure. At the same time, this article contradicts paragraph 4.2, which guarantees maximum disclosure of information.	The wording is needed with more detailed formulations. This article as a whole goes in contradicting to the others following articles.
4.1. <i>Transparency Enhances Accountability</i> . The Bank is committed to accountability to its stakeholders and recognizes the importance of the	Transparency and accountability are the main intentions of what the bank	It is necessary to detail the requirements for transparency and this should

<p>required public disclosure of information held by the Bank, consistent with this commitment.</p>	<p>should adhere to and in this regard they must be clearly and in detail defined. In this case, we see the declarative nature of the article.</p>	<p>not be a simple declaration of transparency.</p>
<p><i>4.2. Maximum Disclosure and Transparency.</i> The adoption of such a principles-based, rather than a list-based, approach to required public disclosure, is intended by the Board of Directors to generate maximum disclosure and achieve a culture of operational transparency at the Bank.</p>	<p>This paragraph is more declarative and contradicts the above paragraph 3.1.4.</p>	<p>If in paragraph 4.1 the transparency criteria are determined, then this item should be merged with it. And also due to both duplication and contradiction to the above articles, the meaning of this item disappears.</p>
<p>5.1. The following four principles shall jointly govern the Bank’s disclosure of information to the public within the exercise of this Policy:</p>	<p>The concept of "jointly govern" is not defined, nor are these principles specified in Article 3.1.1, which refers to guidelines.</p>	<p>In this paragraph it is not clear who and how will jointly manage the disclosure of the Bank's information to the public.</p>
<p><i>5.1.1. Principle 1: Presumption in Favor of Disclosure.</i> The Bank shall ensure transparency and openness by disclosing information that the Bank holds, unless such information falls within an exception stated by this Policy.</p>	<p>This principle is not clearly and explicitly described and contradicts other articles in the provision of information.</p>	<p>It is necessary to fully disclose when information can not be disclosed (clarify exceptions and cases) and compare with other points of the draft of the Policy.</p>

<p>7.2. If disclosure of requested information is determined to be inconsistent with this Policy, then the requestor shall be provided with a written explanation to that effect.</p>	<p>Since incompatibility is the reason that prevents information disclosure, this concept should be disclosed in detail.</p>	<p>In this paragraph it is necessary to write out the criteria for incompatibility with this policy. We suggest to define more broadly included in AIIB directives.</p>
<p>7.3. A request by an external party to disclose information shall be dealt with in accordance with a timetable determined by the President.</p>	<p>In this article there is no timetable, exact time frame. Also this paragraph does not comply with this policy in general.</p>	<p>Review in accordance with the policies and timing of other international financial institutions. We suggest to add the time frame to this point.</p>
<p>8. Requests for Information Disclosure</p>	<p>The title of this article reflects the action and generally does not correspond to the further narrative of this policy.</p>	<p>It is proposed to revise the title to "Procedure of Information Disclosure".</p>
<p>8.1. In consultation with the Board of Directors, the President shall appoint a Chief Information Disclosure Officer to receive requests for information that the Bank has allegedly not disclosed in accordance with this Policy.</p>	<p>This paragraph also does not comply with this policy in general and must be exclude. This paragraph does not comply with this policy, as it introduces subjectivity into the implementation of information disclosure policy.</p>	<p>It is proposed to exclude this paragraph.</p>

<p>8.2. The Chief Information Disclosure Officer shall recommend to the President upholding such requests, within a timetable determined by the President, if the requestor demonstrates:</p>	<p>In this article there is subjectivity, both on the part of determining the disclosure of information, and on the specification of specific terms.</p>	<p>In this provision, determine the specific time frame for considering requests for practices of other international financial institutions.</p>
<p>8.3. In exercise of their duties under this Policy, the Chief Information Disclosure Officer may make recommendations to the President on the disclosure of information as may be considered necessary. Such recommendations, and the resulting final determination on disclosure by the President, shall be disclosed by the Bank.</p>	<p>This paragraph does not correspond in general to this policy, because it contradicts the principle of "maximum disclosure and transparency" of information.</p>	<p>It is proposed to exclude this paragraph.</p>
<p>8.4. The Chief Information Disclosure Officer shall not make recommendations, nor the President make final determinations, in disregard of the Overrides determined by the Board of Directors in accordance with this Policy.</p>	<p>This paragraph contradicts the two previous paragraphs 8.2 and 8.3 and does not comply with this policy in general.</p>	<p>It is proposed to exclude this paragraph.</p>
<p><i>9.1.2 Exception 2: Protecting the Commercial and Financial Autonomy of the Individual and Legal Entities.</i> The Bank shall not disclose information, if doing so would prejudice the commercial or financial autonomy of an individual or the Bank or any other legal Entity. Accordingly, the Bank shall not disclose information, if doing so would prejudice the financial worth or competitiveness of</p>	<p>In this paragraph it should be noted that the protection of the commercial and financial independence of an individual should not conflict with other bank policies and the disclosure of socially-significant information.</p>	<p>It is proposed to exclude this paragraph or define more concretely.</p>

<p>a natural individual person or the Bank or any other corporate entity, or their assets.</p>		
<p><i>9.1.3 Exception 3: Protecting the Functional Integrity of the Bank.</i> The Bank shall not disclose information, if doing so would misuse its resources and facilities, or would be contrary to the purpose and functions of the Bank (in accordance with Articles 1, 2 and 9 of the Articles of Agreement). The Bank shall not disclose information if doing so would prejudice the administrative, deliberative or decision-making discretion of the Bank. Accordingly, the Bank shall not disclose information that is legally privileged, or would jeopardize an inspection, investigation, or audit involving the Bank. The Bank shall not disclose information, if doing so is inconsistent with its duty of due respect to national laws and regulations.</p>	<p>In this paragraph it is unclear which agreement is involved and causes great doubt that the Bank will not be abused.</p>	<p>In this regard, it is necessary to detail in which cases the provision of information will damage the Bank.</p>
<p><i>9.1.4 Exception 4: Protecting the General Powers and Sound Banking Principles of the Bank.</i> The Bank shall not disclose information, if doing so would jeopardize its credit worthiness or access to capital markets at prices the Bank deems reasonable or would otherwise undermine the effective use of its powers in accordance with Article 16 of the</p>	<p>In this paragraph it is not clear which agreement and the Charter are involved and it is highly doubtful that there will be no abuse on the part of the Bank.</p>	<p>It is proposed to define basic concepts such as "effective use of one's powers", "damage to the principles of rational banking"</p>

<p>Articles of Agreement. The Bank shall not disclose information if doing so would prejudice the principles of sound banking in accordance with Article 9 of the Articles of Agreement.</p>		
<p><i>9.1.5 Exception 5: Protecting the International Character of the Bank.</i> The Bank shall not disclose information, if doing so would jeopardize the international character of the Bank or interfere in the political affairs of any of the Members of the Bank, in accordance with Article 31 of the Articles of Agreement.</p>	<p>In this paragraph it is not clear which political affairs of the members of the Bank are involved and which members (countries or employees)?</p>	<p>In this paragraph, it is necessary to write down the concept of political affairs of members of the bank and what members of the organization are involved. And also what is meant by the threat to the international character of the bank.</p>
<p>9.2 If the President determines that the legitimate interests protected by these Exceptions to Disclosure Requirements can be given equal protection by delaying or redacting the disclosure of information, then the disclosure of such information shall be delayed or redacted accordingly.</p>	<p>This paragraph is not clear about criteria. The delay and editing of the information issued contradict the principles of openness and transparency.</p>	<p>It is proposed to determine the criteria that contribute to the decision-making by the President correspond the internal directives and other documents.</p>
<p>10.1. This Policy recognizes that the provisions herein made for the required public disclosure of information held by the Bank, in furtherance of Article 34(4) of the Articles of Agreement to promote transparency, represent an inherent balancing of legitimate interests.</p>	<p>About what agreement and the Charter there is a speech? On the part of AIIB, these documents were not provided.</p>	<p>Describe or provide in footnotes extracts from the Charter and the Agreement for a clearer understanding of this paragraph.</p>

<p>10.2.2. <i>Negative Override.</i> Information that the Bank is otherwise required to disclose in accordance with this Policy shall not be disclosed by the Bank if the Board of Directors determines that the harm arising from the disclosure of such information outweighs the legitimate interest served by disclosure.</p>	<p>This paragraph contradicts the policy of openness of AIIB, since in this paragraph the third actor in the person of the Board of Directors becomes responsible for the decision on disclosure.</p>	<p>This item should be deleted or supplemented with justification for the participation of the Board of Directors in the disclosure mechanism. In the same time please take into consideration the interests of affected people.</p>
<p>10.3. The President shall submit a recommendation to the Board of Directors when it is to consider adopting or revoking any Positive Override or Negative Override..</p>	<p>The powers of the President and the Board of Directors are not clear, since the Charter of AIIB is not presented.</p>	<p>This item should be excluded or supplemented with justification for the participation of the Board of Directors in the disclosure mechanism.</p>
<p>10.4. Positive Override and Negative Override determinations by the Board of Directors shall be disclosed by the Bank.</p>	<p>The powers of the Board of Directors are not clear, since the Charter of ABIA is not presented.</p>	<p>This item should be excluded or supplemented with justification for the participation of the Board of Directors in the disclosure mechanism.</p>
<p>11.1. To the extent that the President adopts an internal classification system for information held by the Bank, that system shall be consistent with this Policy and, in particular, fully adhere to the Governing Principles stated herein.</p>	<p>This paragraph refers to the Governing Principles, which are not fully disclosed in paragraph 3.1.1.</p>	<p>Describe the guidelines in detail or combine items 3.1.1 and 5.1 to avoid duplication of information.</p>

Conclusion

In conclusion, it should be noted that ABII strives for the idea of openness by adopting the Interim Policy earlier and proposing a draft public information policy, explaining that the Provisional Policy is limited in terms of detail and focused on general principles.

- However, the proposed document lacks sufficient detail and it is far from a document that fully discloses the methodology for ensuring transparency and access to AIIB information. Unclear and inadequate summary of the main points in the draft, an indication of the principles without concrete commitments for the implementation of and to ensure transparency and access to information will create big problems in the future AIIB activities.
- The rules on how to conduct requests must be radically revised to provide a clear basis for requesting. In further processing, a system of appeals also requires, with the inclusion of an independent appeal mechanism. In the proposed policy, there is no clear definition of what information is public and which is not.
- In general, the text of the "ASIAN INFRASTRUCTURE INVESTMENT BANK POLICY ON PUBLIC INFORMATION" project does not contain a logical sequence of provisions, very large contradictions between most articles to each other, and also does not specify the protection of the requestor.

Based on the above, we propose to reconsider the draft policy to bring it into line with international standards in this field, using the best international practices, including the experience of other international financial institutions. We are ready to offer our assistance in improving this policy of public information based on efficiency and justice.