

Joint CSO Submission
EIB Group Environmental and Social Policy
August 2021

As a starting point, we welcome the EIB's intention to update and improve its Social and Environmental Sustainability Framework (hereafter the "Framework") under a review subject to public consultation. In this document, several civil society organizations provide recommendations to reinforce a key pillar of this Framework, the EIB Group Environmental and Social Policy (hereafter the "Policy").

It is important to highlight that the analysis and recommendations flagged below need to be considered in connection to other comments on the 11 specific standards put forward by the EIB under public consultation.

We regret that the EIB has embarked in this review without having carried out and published an independent evaluation of the implementation of the current standards. At this stage, the EIB has not provided sufficient evidence that the proposed new Policy would ultimately improve, and not weaken, environmental and social impacts of its operations on the ground. We also call on the EIB to reflect all our recommendations on the Policy into its Procedures to ensure proper implementation. We are disappointed and concerned that the Procedures are not subject to public consultation, despite them being a crucial element linking the Policy and Standards. This is all the more concerning when we are being told by the EIB staff during the various webinars organised in June and July 2021 that many of the CSOs demands - for instance on due diligence - should be integrated into the Procedures, and not under the Policy or under the Standards. This weakens the quality of the public consultation, and leaves an entire discretion to the EIB to ignore the CSO's recommendations. In addition, it was made clear that the oral comments provided during the webinars are not considered as official inputs to the consultation.

Then, we also expect the EIB to inform the public on the proposed costs and budgetary support that will be available for the EIB to implement its future Framework. The lack of staffing, expertise and dedicated resources have been historically one of the reasons explaining the gap between the EIB standards on paper and the reality of their implementation.

The submission below is divided into a set of generic comments, and more specific ones on the various sections of the Draft Policy.

A/ Overall comments on the proposed Policy

Signatories of this submission are disappointed about the draft Policy, as it does not bring any significant improvement to the current EIB Statement of Environmental and Social Principles and Standards. This is mostly a harmonization and technical updating exercise, missing the objective of enhancing the EIB's impacts.

This new Policy would do nothing to address a key challenge at the EIB, which is about closing the gap between its standards and their implementation on the ground. For that, the Policy, the Standards and the Procedures require important modifications.

In particular, the Policy needs to be reinforced because it is fraught with several fundamental weaknesses, on which we propose the following:

- It is urgent to address the lack of clarity around responsibilities for the EIB and for promoters. The Policy needs to state clearly what the due diligence of the EIB should be, for instance regarding human rights. Enshrining key principles in the Policy is instrumental to make sure that the EIB delivers on its vision and objectives.
- Reinforce the Policy so that it is clear that contractual clauses enshrine the standards in all EIB operations, enabling for suspension of contracts as well if the standards are not implemented. This is currently absent from the Policy.
- Another set of crucial principles should be clearly stated: the EIB will not approve any operation until standards are fully met, and until Environmental Impact Assessments (EIAs) are completed.
- Include clear transparency requirements in the Policy, in particular about the EIB disclosing information on its due diligence. This should reinforce the Transparency Policy under review in 2021.
- For years, CSOs have identified a blatant gap at the EIB on the topic of human rights (see a January 2021 [joint letter](#) to the EIB on the matter).

Consequently, we call for the Policy to become ***Environmental, Social and Human Rights Policy*** and to mention that the EIB will develop a Human Rights Strategy to be added to the Policy - similarly to the Strategy and related Action Plan that the EIB already developed for gender.

Furthermore, clear and straightforward provisions should be added in reference to human rights due diligence. In particular, a reference to compulsory Human Rights Impact Assessments (HRIA) should be added, along the following lines:

First, the EIB should conduct dedicated ex-ante screening and Human Rights Risk Assessment (HRRA).

Then, when risks are identified under the HRRA, the EIB should request its clients to conduct a participatory Human Rights Impact Assessment (HRIA).

The Explanatory Note (page 12) for the public consultation provides examples of the factors for the EIB decision on the need for a HRIA, but the Explanatory Note is not part of the Policy and does not have any official or binding nature.

There is a lack of clear anti-reprisals statements in the Policy. The EIB should include a clear statement that *“The EIB has zero tolerance for reprisals, intimidation, threats, harassment, violence or any other abuse of the rights of individuals and in particular of human rights’ defenders and environmental activists”*.

- For all its operations and activities outside the EU, the EIB commits to apply a number of core environmental and social standards. EIB-supported operations, independently of the form of financial commitment, should also apply the European Principles for the Environment and the UN Guiding Principles on Business and Human Rights.

B/ Specific comments on the Policy sections

In the preamble, point 11 should mention the "article 21 of the Treaty on the EU" on the principles for the EU external action.

1. The vision

Point 1.2: The primary aim of the EU in all fields of international cooperation is eradication of poverty. Thus, the aim of the EIB group is not to foster economic growth (such an objective has not been established either in the Treaty nor in the EIB Statute). In line with the Treaty on EU, "economic growth" should be replaced with "sustainable economic, social and environmental development". Fighting poverty and reducing inequalities should be added, in line with the Treaty on the EU, see the example below:

Art 21.

(...) 2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(...) d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;

The "do not cause significant harm" principle should also be changed when applying to people, so that it becomes "do no harm".

2. The Group's Contribution

We regret that among the ten key areas for action, the EIB does not list promotion of human rights and fundamental freedoms in general, not only at work and not only those related with gender equality.

The EIB should then add a dedicated section "promoting, protecting and respecting human rights". It should specify the commitment to a rights-based approach, its role in ensuring a zero tolerance policy against reprisals and the measures taken to ensure its activities do not link to or contribute to broader projects limiting the enjoyment of human rights. It should refer here to the Treaty on the EU, including Article 21 on the principles underpinning EU's external action, and the UN Universal Declaration:

Art 21.1 The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human

rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(...)

b) consolidate and support democracy, the rule of law, human rights and the principles of international law;

The provision on “Building economic resilience and social cohesion” should be reinforced by adding a clear reference to the need for the EIB to support essential public services accessible to all.

The provision on « Addressing fragility and conflicts » should insist on the fact that activities do not only consist of recovery but require enhanced human rights due diligence both from the bank and the EIB Group clients.

3. The Group’s operating framework

The Point 3.2 i does not exhaust the ways in which EIB should mainstream environmental, climate and social considerations into its decision-making. In line with the Treaty provisions the EIB should also mainstream environmental, climate and social considerations through safeguarding its values, fundamental interests, security, independence and integrity.

A reference to the EIB exclusion list should also be added here, listing the type of operations which will not be financed by the Group.

The Operating Framework should clearly state that the EIB will not finance - and will halt any finance for - operations which do not comply with the EIB’s standards. The draft only mentions operations “*that are expected to meet the requirements*”.

The Operating Framework should clearly establish enforcement and supervision procedures, mentioning the necessity to have dedicated procedures covering compliance, as well as independent monitoring and reporting. The Framework should also state that the EIB will reinforce its internal culture and decision-making processes so that management and staff can be held accountable for their compliance with the Policy and Procedures.

In this section, in an additional point, the EIB should commit to develop a Human Rights Strategy outlining how human rights specific risks and impacts will be considered, prevented and mitigated at all stages of the project-cycle, and describe how the Bank will promote a human rights-based approach among its staff, stakeholders, clients and counterparts.

It should also commit to develop a system of human rights due diligence at the project level. A “do no harm” and “only do good” approach should prevail to ensure the projects the EIB supports respect the core values of the EU external action and do not directly or indirectly contribute to human rights violations. A reference to the EIB developing a solid human rights

risk assessment (HRIA) procedure into the Group's Risk Management Framework should be added.

Beyond the project level the EIB needs to carry out a systematic routine check of the client's track record of implementing human rights requirements prior to beginning appraisal. UN Special rapporteurs' repositories, human rights organizations and human rights violations reporting and civil society consultations can be used as sources to inform this process.

The EIB due diligence and assessments should look beyond each project financed to address its environmental and social cumulative and potential broader impacts, including impact after project completion.

4. Policy Implementation Framework

Point 4.2: Focusing only on the impact of the project itself, defined as "*works, goods, services and/or business activities for **which EIB financing is sought** either directly or through an intermediated financing operation*" to define the obligations and safeguard to apply is not sufficient. The appraisal should place the project in context and the project financed by the EIB Group should not participate, contribute, ease, or abide to the realization of any other operations that impede human rights.

Point 4.3: Despite the mention that this section of the Policy describes the roles and responsibilities of both the EIB and its promoters, in reality it does not provide sufficient clarity about these roles and responsibilities.

The Policy lacks provisions relating to the project's associated facilities which are not funded by the EIB but are directly related to the project. Such associated facilities should also be subject to the EIB's due diligence and the promoters should be required to apply the EIB's Environmental and Social Standards to the associated facilities. Such provisions are present in the policies of other IFIs thus there is no reason why the EIB should not include similar provisions.

Roles and responsibilities

In Point 4.4, the EIB should clarify that it will not finance projects that do not comply with EU law, EIB Standards, EIB's sectoral policies, national legal requirements and international human rights law, the EU Charter of Fundamental Rights as well as the Aarhus Convention. The current draft lacks reference to the EU law, EIB Standards and its sectoral policies. In addition to countries' obligations under international law, the EIB should require that relevant projects comply with the Aarhus Convention, under which the EIB is obliged to ensure access to environmental information, public participation in decision-making and access to justice in the context of its activities.

Points 4.5 and 5.7: When co-financing projects with other IFIs, the EIB should always conduct project's environmental, social and human rights appraisal, including to identify gaps between the EIB's and IFI's requirements in order to agree with those IFIs a common approach

and supplementary requirements to be compliant with the most stringent regulations and standards that prevail.

The EIB has to clearly demonstrate that co-financiers provide the same level of environmental and social protections. There has to be a requirement included for the full disclosure of such an 'equivalence-testing'.

The EIB often emphasizes its unique nature as an EU body operating under a specific legal and institutional framework. Nevertheless, this unique nature does not allow the EIB to apply any exemptions from its policies and standards and to delegate any part of its due diligence to other IFIs. The EIB shall not be entitled to delegate environmental, social and human rights due diligence (as it does not delegate other types of appraisals - financial, technical - to other financing partners). Delegating project due diligence to other financing partners would contravene the principle of informed decision-making. This delegation raises serious concerns as well on the future role of the accountability mechanism to identify clear instances of non-compliance.

Also, such solutions do not exist in the policies of the similar IFIs, such as the IFC or the EBRD, which are not entitled to delegate project environmental and social due-diligence to third parties.

Point 4.6 In case of blending of EIB financing, the promoter should also be required to fully comply with the EIB's policies and standards requirements and not merely to respect them.

EIB's Environmental and Social Standards

Point 4.9: In order to properly reflect the EIB's rights-based approach and the need to strengthen the integration of human rights considerations, the name of the first Standard should be changed to: *Standard 1: Environmental, social and human rights impacts and risks*.

EIB Environmental, Climate and Social Due Diligence and Monitoring

A sound due diligence demands for an implementation framework with clear statements about exactly what is required and how requirements will be operationalized (delivery mechanisms). The proposed language: "*due diligence shall be proportionate to the nature and scale of the project and the likely significance of its impacts and risks*" is problematic. All impacts must be clearly categorized with respect to their severity. A sound due-diligence should leave meaningful room for public comment or participation at the scoping and initial examination stage.

We suggest expanding this section to "*Environmental, Climate, Social and Human Rights Due Diligence and Monitoring*". This should be reflected in Point 4.10 by committing to conduct environmental, climate, social and human rights due diligence and monitoring.

The EIB shall not be limited in its due diligence and monitoring to information provided by the promoter. The EIB shall also seek other sources of information and especially conduct site

inspection and interviews with stakeholders. The EIB should ensure the production of independent social and environmental baseline studies for high-risk projects, to depict the state of environment, health and well-being, incorporated in the Environmental and Social Impact Assessments (ESIAs).

A sound due diligence process should commit the Bank to perform systematic **human rights due diligence at the project level (in addition to social due diligence)**. This should be based on 1 / human rights risk screening and human rights risk assessment (HRRRA) by the EIB; 2 / human rights impact assessment (HRIA) required from the promoter when the human rights risks related to the projects are significant; 3 / monitoring and reporting procedures; and 4 / access to remedy.

The language in this section is currently not human rights-respectful, partly because the phrasing requires more specific definitions (e.g. what is “a human rights-responsive due diligence process” that is scoped by ESDD? Human rights risks are scoped through human rights analysis, not through ESDD), and because the commitment is to “human rights principles” which are distinct from human rights. For example, transparency is a “human rights principle”, but unless the commitment is to transparency in reporting on environmental, social, cultural, civil and political (and indigenous) rights, a kind of cherry-picked transparency is not rights-respectful.

A specific provision on financial intermediaries should be added. Indeed, the EIB requirements should also apply to sub-projects financed by financial intermediaries. Subprojects of a certain size (above a EUR 25 million threshold), as well as high-risk projects of a smaller size, should be subject to due diligence by the EIB itself. Due diligence should assess whether the intermediary has the capacity to apply EIB’s policies and procedures. In any case, the EIB shall oblige financial intermediaries to conduct sub-projects due diligence in a transparent way and should oblige intermediaries to provide to the EIB relevant environmental and social information for all subprojects which require environmental and social impact assessment. The EIB tends to rely on the due diligence information provided by a client.

The draft Standard 11 fails to ensure these basic requirements are stated. Therefore, the Policy should urgently include such references to the EIB responsibilities, so that it does not delegate all responsibilities in a non-binding manner to its clients.

Appraisal

We suggest adding the following sentence in order to mainstream human rights consideration into the EIB’s appraisal: *“The EIB shall undertake an environmental, climate, social and **human rights** appraisal of proposed projects **to inform** the decision of financing”*.

This section should also state what the aim of the EIB’s appraisal is and what the outcome should be. The aim of the EIB’s appraisal should be to inform the decision of financing (whether to grant financing to a project or not) and to ascertain that operations comply with the EIB policies (sectoral, horizontal policies, EIB environmental and social Policy well as the Standards; the EU law, national law and international law). It should also identify

environmental, social, human rights risks, impacts and their magnitude and mitigation measures and any relevant additional requirements and conditions for the promoters.

The EIB appraisal should determine whether a project should be subject to Environmental and Social Impact Assessment (ESIA) and/or to Human Rights Impact Assessment (HRIA) in line with its Standards (all IFIs determine project categorisation during their own due diligence). Due diligence should also establish classification of risks and monitoring requirements.

The aim of the appraisal should furthermore be to establish which standards are applicable for the operation and inform the stakeholders about this. The proposed policy does not spell out the 'applicability' criteria, and/or does not require a compliance review to ensure that clients' high risk sub-projects comply with EIB standards.

If (sub-)projects have to be in accordance with only those standards the EIB or even an FI deems relevant ("applicable standards"), it might become difficult not only for the affected communities to understand the safeguards which apply to them, but also makes it difficult for the Accountability Mechanism to function and to determine compliance of (sub-)projects with Bank policy and standards. The EIB should require all projects and sub-projects to comply with all the requirements.

This section should also state how and when the EIB will present the results of the project's appraisal to the public (what documents it will produce and when they will be published). In particular, it should mention that stakeholder engagement and a time bound disclosure of information are required prior to loan approval by the EIB's Board of Directors. Public disclosure allows for corrective measures to be introduced early on to inform the decision on financing.

The EIB should add a provision stating that the EIB will ensure in its due diligence that meaningful stakeholder's engagement has taken place. There is a lack of oversight by the EIB at the various stages of stakeholder engagement. Hence, we call on the EIB to clarify its own responsibilities and reinforce its monitoring over stakeholder engagement in all projects it finances. The [outcome of the complaint](#) to the EIB Complaints Mechanism (CM) on the Castor project formulates an important recommendations for the EIB, which should be fully reflected in the Policy and Standard 2: *"The Bank's services should verify that the concerns and risks flagged as part of the Stakeholder Engagement process are adequately assessed and addressed, as relevant, by the promoter. The Bank's services should also adequately document the outcome of their analysis and the appropriate action that needs to be taken for an informed decision making process."*

Points 4.15 and 4.16 were partly copied from the EBRD Policy however obligations for promoters have not been reflected.

In Point 4.15, the following missing part should be added: (...) *the client will be required to align its corporate environmental and social management systems with the Environmental and Social Standards and develop measures at the corporate level to manage the environmental, climate and social impacts and risks associated with its business activity.*

In point 4.16: *“(…) It may have to rely solely on publicly available information to assess the promoter’s capacity and commitment to manage the relevant impacts and risks associated with its business activities (and with the sub-projects/investments to be financed) in accordance with relevant legal requirements, EIB’s Environmental and Social Standards, and international good practice. The appraisal will identify whether the available information is sufficient to determine the environmental, climate and social risks and impacts of the project and compliance with the EIB’s Standards. After subscription, the Bank will require clients to comply with the EIB’s Environmental and Social Standards. High risk projects (requiring EIA or ESIA) will not be financed through capital market instruments.”*

A separate provision should be added in the Policy concerning legal documentation securing implementation of the Environmental and Social Standards in financed projects. An example of such provision from the EBRD Environmental and Social Policy, Point 4.17: *“Financing agreements with clients in respect of a project will include specific provisions reflecting environmental, social and human rights requirements. These include compliance with all applicable standards and law as well as provisions for environmental and social reporting, stakeholder engagement and monitoring. Legal documents will also include, where appropriate, rights and/or remedies for the Bank in the event that a borrower or investee company fails to implement the environmental, social and human rights provisions consistent with the requirements of the financing agreements”*.

The contractual relation with EIB clients is ultimately how the EIB can make sure its standards are respected, so it is of utmost importance to include in the EIB’s Policy a clear reference to compulsory clauses in all the EIB contracts and the necessity to suspend disbursements in case of a breach of the EIB’s policies and/or Environmental and Social Standards, either in Point 4.2 or throughout Points 4.10 or 4.11.

Monitoring

The EIB should not limit its monitoring only to the contractual conditions laid out and unspecified legal requirements. This creates major risks of hobbling monitoring and opens the door wide to human rights violations and non-compliance with the EIB’s Environmental and Social Standards.

As written, this is an unworkable weak provision on monitoring. The aim of the monitoring shall be to monitor and evaluate the project’s implementation in accordance with relevant legal requirements, EIB policies and EIB Environmental and Social Standards (not only with the provisions of this Policy) throughout the project’s implementation. It should also clarify what happens if the client does not comply with the EIB’s requirements, standards and other conditions established in finance contracts, e.g that the EIB will provide assistance regarding the environmental and social performance of the project; or that the EIB will require further measures and corrective actions in order to improve the project environmental, social, climate and human rights compliance.

It should also state how the EIB will conduct monitoring e.g through site visits, reviewing documents sent by the promoter, hiring external experts, reviewing information from third parties, local communities and civil society organisations.

Additionally, high risk projects require independent social and environmental experts, with site-specific expertise, not affiliated with the project to carry out the EIA and require for independent third party monitoring (involving civil society). Third party monitoring is consistent with the IFC's requirement that the client obtain qualified external experts to validate its monitoring information with "diverse, irreversible or unprecedented impacts" (IFC Performance Standards 1, p.6).

Here the policy should also include a reference to transparency requirements, and ultimately describe the form and frequency of sharing the monitoring outcomes with the public.

List of signatories:

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Accountability Counsel



ActionAid International



Alliance of Associations Polish Green Network



Arab Watch Coalition



Armenian Forests NGO



CEE Bankwatch Network



Both ENDS



Counter Balance



Ecoaction Ukraine



Ecolur



Environmental Paper Network,
Biomass Finance Working Group



Eurodad



International Federation for Human Rights



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