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Counter Balance Challenging Public Investment Banks

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Why can a third of European Investment Bank lending evade the Bank's environmental and social rules?

The EU's house bank must tighten its intermediated lending standards

Financial intermediary lending – an untenable loophole causing tangible harm

The European Investment Bank's (EIB) financial intermediaries (FIs) take various forms, including private equity funds, investment funds, commercial banks and state-owned development banks. These help the EIB to reach smaller clients than it would otherwise be able to finance. The EIB's global lending via intermediaries amounted to EUR 22.6 billion in 2020.[1] In the EU, credit lines via intermediaries accounted for over one-third of the Bank's operations in the same year.[2]

In addition, the European Investment Fund, a risk finance facility which is a part of the EIB Group, reached almost EUR 13 billion in financing entirely directed through financial intermediaries.

Yet despite years of civil society organisations and the European Parliament raising the alarm,[3] the public has little idea of what happens to this money, whether it is effectively used and whether it causes environmental and social damage.

This briefing follows an analysis published in March 2021[4] which looked at the EIB's commitments on the transparency of financial intermediary investments and served as an input to the Bank's Transparency Policy

[1] European Investment Bank, *EIB financing and borrowing activities 2020*, 66, 2021.
[2] European Investment Bank, *EIB financing and borrowing activities 2020*, 59.
[3] See our briefing published in March 2021 and the European Parliament resolution of 7 July 2021 on control of the financial activities of the European Investment Bank - annual report 2019, which, among others: '*Notes that in 2019 the EIB supported several projects involving hydropower; welcomes the Environmental, Climate and Social Guidelines on Hydropower Development; welcomes the fact that the EIB is currently upgrading its reporting requirements for intermediated lending to account for counterparty alignment with the Paris Agreement and the EU Taxonomy on Sustainable Finance, as well as reviewing its Environmental and Social Sustainability Framework;* ***stresses that such new requirements should enhance the transparency of EIB operations involving financial intermediaries in order to identify and avoid potential negative environmental or human rights impacts of hydropower operations both inside and outside the EU, while safeguarding access to finance for SMEs***' (emphasis added).
[4] CEE Bankwatch Network and Recourse, Why is the EIB still hiding one-third of its lending?, 4 March 2021.

revision. The Bank is now undertaking a revision of its Environmental and Social Policy and Standards, and as part of this process it has come up with a new draft Standard on financial intermediaries. This briefing shows how the draft Standard fails to address the problems identified so far and how the EIB is falling behind its peer international financial institutions (IFIs) in ensuring no harm is done by the Bank's intermediated investments.

Financial intermediary projects – far from small and harmless

There is a common perception that projects financed via intermediaries are small projects with low risks. Not only do the examples below show that even small projects can be harmful, but in reality, financial intermediaries can finance large projects that can cause significant environmental damage. For example, the EIB's lending for small and medium-sized enterprises follows a definition in which medium-sized enterprises have between 50 and 249 employees.[5] Such companies are large enough to cause significant environmental and social damage – see for example the small hydropower examples below, where in many cases only one to two people are employed during operation and only a few more during construction, depending on the size of the plant. In addition, EIB lending for mid-caps (a separate category from small and medium-sized enterprises) reaches companies with between 250 and 3,000 employees[6] and the private equity funds financed by the Bank can invest in companies of any size.

For example, in October 2019 the EIB confirmed that it had decided not to go ahead with direct financing for the 340,000 tonnes per year Vinča municipal waste incinerator in Serbia, after its own due diligence confirmed that the project would likely interfere with Serbia's ability to meet EU circular economy targets for recycling.[7] The EIB's decision was welcomed by civil society organisations, but it turned out that the EIB-financed Marguerite II Fund has remained a shareholder in the project company despite the EIB pulling out.[8] The case clearly shows how little influence the EIB has had over its intermediaries' investments in reality, even when they are large projects that are likely to have a significant environmental impact.

Even where investments are relatively small, they can still cause significant harm. This is the case with small hydropower projects in southeast Europe. The EIB has financed more than 27 such plants through financial intermediaries since 2010, though the exact number and many of the names of the plants remain unknown due to the Bank's refusal to systematically disclose information about sub-projects funded via intermediaries.[9] Such projects are often built in remote and unspoilt mountainous areas, frequently without carrying out environmental impact assessments and often resulting in entire stretches of rivers and streams drying out for much of the year. Monitoring and enforcement is almost impossible due to the remote locations, and wooden or metal boards are sometimes used to block bypass channels and divert all water into the pipe leading to the turbine,

[5] European Investment Bank, SMEs and Mid-Caps, last accessed 20 September 2021.
[6] European Investment Bank, SMEs and Mid-Caps.
[7] CEE Bankwatch Network, EU bank drops Belgrade incinerator, citing impact on recycling: EBRD and other banks press on, 28 October 2019.
[8] Marguerite Fund website, last accessed 15 September 2021.
[9] CEE Bankwatch Network, Euronatur and Riverwatch, *Financing for hydropower in protected areas in Southeast Europe: 2018 update*, March 2018. This report identified five plants financed via intermediary sub-projects and 22 which could not be identified. In March 2020, the EIB disclosed a limited amount of additional information enabling the identification of 11 more sub-project beneficiaries.

in order to increase power production and decrease the residual flow.[10] *Such boards can be removed easily by operators if they know that a monitoring visit or inspection is going to take place.*

The EIB's current approach

International financial institutions are starting to realise the risks posed by financial intermediary investments, but the EIB is falling behind its peers. Its current 2009 Environmental and Social Statement[11] makes relatively clear the requirements for financial intermediaries to adhere to EU law as well as national law.

In addition, the EIB usually delegates due diligence of intermediated investments to the intermediaries themselves. The idea is that the EIB assesses their capacity to undertake such due diligence. Its Environmental and Social Handbook states that:

> *64. When lending through financial intermediaries and particularly outside the EU, the EIB assesses the financial intermediaries and their capacity to on-lend the EIB funds in line with the EIB's E&S standards and particular requirements, including those outlined in the Statement of Environmental and Social Principles and Standards 2009.*

And:

> *65. The compliance of projects financed through intermediaries with EU directives/national legislation, as applicable, and with the EIB's E&S Standards, is addressed by the EIB ex-ante in the context of the due diligence of each financial intermediary (whereby the EIB obtains comfort that the intermediary has the capacity to conform to EIB standards, including presenting only sub-projects for allocation which comply with EU/national law). In addition, the finance contract signed between the intermediary and the EIB, includes contractual clauses by which the final beneficiaries must comply with all the relevant national laws and regulations, international conventions to which the host country is party to, and if applicable the Community acquis.*

But this does not work in practice. Projects such as the Ilovac small hydropower plant in Croatia[12] and the Blagoevgradska Bistritsa small hydropower cascade in Bulgaria[13] show that at least some intermediaries do not have the capacity or interest in undertaking thorough due diligence. Indeed, as long as the intermediary gets its loan back, the public does not know about its involvement in the project, and local law enforcement institutions do not do their work adequately, there is no real incentive to undertake detailed environmental and social checks or project monitoring, as there is little financial or reputational risk for the intermediary.

[10] E.g. the Sutanovina and Klupci hydropower plants in Serbia (not financed by the EIB, but the same issue can apply to any small hydropower plant). See CEE Bankwatch Network, Money Flows, Rivers Dry, 22 March 2018.
[11] European Investment Bank, The EIB Statement of Environmental and Social Principles, 2009.
[12] For more details, see here.
[13] For more details, see here.



Ilovac hydropower plant, Croatia[14]

In 2012, the EIB signed a loan for the Croatian Bank for Reconstruction and Development (HBOR) to use for smaller projects. One of these was the 1.4 MW Ilovac hydropower plant in the river Kupa Natura 2000 site, for which a sub-loan was signed in 2014. The plant went online in 2015. Bankwatch discovered the EIB's involvement in 2016 after requesting information from the Bank about its intermediated financing for small hydropower projects in southeast Europe. However, the EIB was able to provide only a summary of the environmental impact assessment (EIA), and not the whole study, which illustrates the lack of attention the EIB pays to the EIAs of its sub-projects through intermediaries.

The full EIA was obtained from the Croatian authorities, but turned out to be of poor quality. For example, it failed to establish whether the Danube salmon (Hucho hucho) was present at the project site or not, despite the fact that it is endemic to southeast Europe and is known to live in the Kupa; is considered endangered in Croatian law and by the IUCN; and is protected under Croatian law, the Habitats Directive and the Bern Convention. Three more fish species endemic to southeast Europe which need fast-flowing water to live in[15] were identified at the site, though. Despite the fact that the dam would clearly slow down the river flow, thus threatening their habitat and living conditions, the EIA concluded that there would be no impact on them. Altogether 15 fish species were identified by the EIA as being protected by the Habitats Directive or the Bern Convention, and five species as being strictly protected under Croatian national law. It is scientifically proven that several of these fish

[14] For more details, see here.
[15] *Cobitis elongata*: https://www.fishbase.se/summary/26618, *Rutilus virgo*: https://www.fishbase.de/summary/Rutilus-virgo.html, Barbus balcanicus: https://www.fishbase.se/summary/Barbus-balcanicus.html

species are highly sensitive to the construction and operation of hydropower plants,[16] and therefore it is inexcusable that the EIA did not state this.

Under normal circumstances, civil society organisations would have alerted HBOR and the EIB to their concerns and tried to ensure the project's impacts were properly assessed. But this was impossible to do before the plant was built, because neither the EIB nor HBOR disclosed their role in the project. Since then, the EIB has directed questions about the project to HBOR. HBOR systematically refuses to disclose information to the public about its projects and other activities, despite having lost 31 court cases on access to information by early 2020.[17] Thus, both financiers of the project are trying to deny responsibility for the project. This is all the more concerning given that HBOR is a frequent recipient of EIB financing.



Discharge of water below Blagoevgradska Bistritsa-8 HPP not described in the EIA/AA screening decision, 21 December 2020

Blagoevgradska Bistritsa hydropower cascade, Bulgaria[18]

This project consists of eight small hydropower plants installed on pipelines that supply the town of Blagoevgrad with drinking water, with a total installed capacity of 6.375 MW. The project's construction was supported by a EUR 5.7 million loan provided by the European Bank for

[16] For a useful summary, see the table on p.23ff in Steven Weiss et al., Endangered Fish Species in Balkan Rivers: their distributions and threats from hydropower development, EuroNatur and Riverwatch, 2018.
[17] For more details see here.
[18] For more details, see here.

Reconstruction and Development (EBRD) in 2008 through a financial intermediary – the commercial bank Allianz Bank Bulgaria PLC.

In 2012, after the cascade was built and had started operating, the EIB provided a EUR 6.1 million loan for the project company's trade receivables via an Allianz BG credit line. Even though the EIB did not finance the plants' construction, its end client is a special purpose vehicle set up only to build and operate this project, so whatever financing is provided to it by definition supports the operation of the hydropower cascade.

At the time the loan was approved, it was already clear that much more water was being taken from the river for the hydropower plants than had previously been used to supply drinking water, thus often drying up the riverbed and leading to the disappearance of species such as otters and crayfish which had previously been abundant in the river. The EIB did not carry out environmental due diligence on the Blagoevgradska Bistritsa plants, did not assess the decisions of the competent authorities regarding the Environmental Impact Assessment (EIA) of the plants, and did not carry out field visits. Instead, the Bank distanced itself from the project and instructed Bankwatch to contact the plants' owner and/or the competent authorities in Bulgaria.

A complaint by Bankwatch to the EIB's Complaint Mechanism in 2019 on the Bank's blanket refusal to disclose a list of intermediated hydropower sub-projects in southeastern Europe resulted in a finding that the Bank must check on a case-by-case basis whether it can disclose sub-project information rather than assuming it cannot.[19]

In 2019, the EIB adopted Environmental, Climate and Social Guidelines on Hydropower Development (Hydropower Guidelines), which clarifies the Environmental and Social Standards when applying specifically to hydropower. The Guidelines contain very useful sections and requirements such as the referral of hydropower projects financed via financial intermediaries to the EIB for due diligence, public disclosure of hydropower projects by the financial intermediary, and the importance of a strategic approach to hydropower (i.e. that the impacts should be assessed first at the level of the river basin and only later at the project level).

The Hydropower Guidelines are a very welcome step forward. However, many of their provisions are not embedded in the EIB's Environmental and Social Policy or Standards, such as those on financial intermediaries. Since the Guidelines are not formally binding for the EIB, these clauses may not be consistently applied – and furthermore, they only relate to hydropower, not to other sectors.

The EIB's new draft Policy and Financial Intermediaries Standard

In June 2021 the EIB published a new draft Environmental and Social Policy[20] and 11 Standards which clients have to follow. The Policy will now supersede the EIB's Environmental and Social

[19] EIB Complaint Mechanism Conclusions Report, Complaint SG/G/2019/01, 30 September 2019.
[20] The draft Policy is available here.

Statement, and for the first time, the Standards will include one specifically on financial intermediaries.[21]

The draft Policy is much less clear than the existing Statement on the need for projects to be in line with EU law – and mentions EU law only in passing. In the section on the EIB's commitments to finance only legally compliant projects, EU law is not mentioned explicitly at all, and the Policy would not apply outside of the EU and accession countries: '*4.4 The EIB shall not, to the best of its knowledge, finance projects that do not comply with the relevant national environmental, climate and social (ECS) legal requirements and country obligations under relevant international treaties.*'

Neither does the draft Financial Intermediary Standard sufficiently clarify the need to comply with EU law. Paragraph 12 sets this out reasonably clearly for projects in EU, EFTA, candidate and potential candidate countries, but paragraph 13 states that '*For sub-projects outside the European Union, the FI shall require that they be implemented in line with the applicable national legislation and the relevant EIB Environmental and Social Standards.*' A financial intermediary needs to be able to clearly tell which of the EIB Environmental and Social Standards are relevant and how to apply EU law, but will not be able to do so from this short summary.

The draft FI standard (paragraphs 11 a. and 11 b.) also still delegates responsibility to the EIB's FI clients to screen and carry out due diligence on sub-projects, as well as monitoring the projects. They must '*screen all sub-projects against the EIB's list of excluded activities as regularly amended, and any other environmental and social undertakings as set out in the documentation concluded between the FI and the EIB'* and '*identify, assess and monitor the management of the significant environmental and social impacts and risks arising from sub-projects, as applicable, and ensure that agreed environmental and social undertakings are met.*'

There are two problems with this. First, unlike in the Hydropower Guidelines, there is no obligation for the intermediary to refer any projects (for example, environmentally risky projects which would or may require an environmental impact assessment in the EU) to the EIB for due diligence and monitoring. This would be alright if all projects which are likely to have significant social or environmental effects were excluded from intermediary lending, but the second issue is that they are not: the '*regularly amended*' EIB list of excluded projects dates from 2013,[22] and does not even exclude projects with high CO_2 emissions, in line with the EIB's Energy Lending Policy. The list should have been updated as part of the Environmental and Social Policy and Standards revision, but has not been.

So intermediaries *may* (point 14 of the draft FI Standard) refer high-risk sub-projects to the EIB but are given no clarity on what sub-projects are considered high-risk. The standard leaves it entirely to the discretion of the FI to decide which sub-projects it will consider to have potential significant environmental and social impacts and risks which should be reported to the EIB. It also leaves it entirely to the discretion of the EIB to require the FI to report such risks to the Bank.

[21] The draft Standard 11 on Financial Intermediaries is available here.
[22] The list can be found here.

There is also no requirement for intermediaries to publish information about the sub-projects they are financing. Point 7 states:

> *In order to enhance transparency on non-financial, sustainability-related information, the FI shall:*
>
> > *a. if located in EU and EFTA countries, comply with sustainability disclosure requirements under national and EU legislation which is applicable to their activities*
> >
> > *b. if located in the rest of the world,[23] comply with the applicable national legislation and make available to the public information on its due diligence policies and procedures, or equivalent, for assessing and managing the environmental and social impacts and risks of sub-projects, commensurate to the FI's size and the nature and scale of its business, where relevant.*

This is a red herring. National and EU legislation do not usually have any provisions requiring commercial banks – and often also national promotional banks – to disclose their sub-projects and beneficiaries. So requiring them to comply with such legislation is of no help in improving transparency. Similarly, for the rest of the world, a bank's '*due diligence policies and procedures*' are of little interest without seeing which projects they are applied to in reality and how.

Interestingly, recognising the ongoing controversy around hydropower, in 2019, the EIB's Hydropower Guidelines made a step forward, stating that: '*Where the EIB is providing financing to an FI, the FI will disclose the list of hydropower projects it is financing on its website.*' Yet the new draft FI Standard makes no reference to intermediaries having to disclose any specific information about sub-projects.

As we will see below, all of this puts the EIB out of step with its peer banks, described below, who have undertaken considerable improvements in their financial intermediary policies in recent years.

The EIB's peers move ahead

The International Finance Corporation (IFC), the Asian Infrastructure Investment Bank (AIIB) and European Bank for Reconstruction and Development (EBRD) have all committed to improve disclosure for financial intermediary loans in higher-risk sectors, while the Green Climate Fund is the clear leader in this field and requires the disclosure of all sub-projects (see Annex 1 for details). The World Bank has also already for years required disclosure for higher-risk projects before sub-projects are signed.

The definition of higher-risk sectors requiring disclosure and additional due diligence by the multilateral bank lender varies, but the EBRD's definition includes all Category A projects – those

[23] For the purpose of disclosure requirements, Candidate and potential Candidate countries are included in the "rest of the world." [Footnote part of the original text.]

which are always subject to Environmental and Social Impact Assessment (and are listed in the EBRD's Environmental and Social Policy) – plus a list of project types which might not always be subject to a full environmental assessment procedure, but are nevertheless defined by the EBRD Policy as high-risk (e.g. activities that occur within or have the potential to adversely affect an area that is legally protected).

The EBRD has re-introduced an obligation for intermediaries to notify the Bank when considering any high-risk projects listed on this 'referral list', at which point the EBRD then becomes involved in the due diligence process.

The China-led Asian Infrastructure Investment Bank has also recently revised its Environmental and Social Framework to include increased AIIB staff responsibility for monitoring and supervision of what it calls 'Higher Risk Activities' funded via FIs. There is also a new requirement for the AIIB to have prior approval of high-risk sub-projects. Environmental information on Category A sub-projects must be disclosed before approval and on all other higher-risk sub-projects within a year of financing.

The Green Climate Fund, whose investments are all carried out through intermediaries, has a different approach. It specifies different accreditation levels for different entities, enabling some to finance more risky investments than others depending on their capacity to assess and manage the risks. Even in this case, the Fund reviews the sub-project categorisation awarded by the accredited entities for specific sub-projects before they are approved.

The tables below show how the EIB's new Financial Intermediary Standard compares to the standards of other peer banks in three key aspects: Transparency and disclosure of sub-projects; oversight of, and involvement in, due diligence on sub-projects by the international financial institution; and the application of safeguard policies to intermediary sub-projects and access to the IFI's recourse mechanism. Another key aspect of the EIB's policy should be respect for EU law in all its operations; however, this is not possible to compare to other IFIs except the EBRD, due to the fact that no other IFI has a similar relationship with the EU.

Transparency of intermediary loans	No requirement for client to disclose sub-projects	Requirement for client to disclose higher risk sub-projects proactively after contracts signed	Requirement for client to disclose higher risk sub-projects proactively before contracts signed	Requirement for client to disclose all sub-projects proactively, before contracts are signed	Requirement for IFI support for the project to be posted at the location of the project
EIB draft FI Standard	X				
EBRD		**X**			
GCF				**X**	**X**
IFC		**X**			
World Bank			**X**		
AIIB		**X** (non-Category A)	**X** (Category A)		

Due diligence	Due diligence delegated to FI; no referral or referral optional	Due diligence delegated to FI; high risk projects referred back to the IFI) – risk level set by the IFI	Due diligence delegated to FI but categorisation reviewed by IFI	IFI board must approve high-risk sub-projects	FIs not allowed to finance high-risk projects
EIB draft FI Standard	X				
EBRD		X			
GCF			X		X (depending on categorisation of accredited entity)
IFC			X		
World Bank		X[24]			
AIIB				X	

Application of safeguards and access to recourse mechanism[25]	Safeguards apply fully but no access to the IFI grievance mechanism	Safeguards apply to medium- and high-risk projects but only partial access to IFI grievance mechanism	Safeguards apply fully but only partial access to IFI grievance mechanism	Safeguards apply to medium- and high-risk projects and complainants have access to the IFI grievance mechanism	Safeguards apply fully and complainants have access to the IFI grievance mechanism
EIB draft FI Standard	X[26]				
EBRD		X[27]			
GCF					X
IFC				X	
World Bank				X	
AIIB			X[28]		

[24] If the World Bank does not think the FI has capacity, the Bank will review high-risk projects itself and demand prior approval – see World Bank, Environmental and Social Framework, 9, 2017.

[25] EU law is not assessed here as no other IFI has the same relationship with the EU as the EIB.

[26] Access to the Complaints Mechanism is de facto prevented by non-disclosure of information about projects, so it is highly unlikely people will know the EIB was involved.

[27] The EBRD's Independent Project Accountability Mechanism can only carry out a compliance review for the Bank's compliance with its standards, which may limit the scope of its treatment of cases involving financial intermediaries.

[28] The AIIB's Project-affected People's Mechanism can only carry out a compliance review for the Bank's compliance with its standards, which may limit the scope of its treatment of cases involving financial intermediaries.

Recommendations for the EIB

- Stop providing general-purpose loans to FI clients as the IFC has done[29] and instead, implement **ring-fencing of FI investments** to support specific projects that have low environmental and social risk and genuine impact on achieving EU policy goals. Ensure this ring fencing is legally enforceable and traceable;
- Clarify in the Policy and FI Standard the need for all EIB-financed operations to comply with **EU law, the EIB's Environmental and Social Standards and all EIB sectoral policies**;
- Update the EIB's 2013 **exclusion list** to at least mirror the requirements in the EIB sectoral policies – for instance, for financial intermediaries not to finance any unabated fossil fuels, as required in the 2019 Energy Lending Policy.
- Adopt a **'referral list'** approach, where higher-risk sub-projects are clearly defined, and therefore automatically referred to the EIB for due diligence, risk appraisal and classification, setting conditions and monitoring. This should include sub-projects which may have human rights implications, affect indigenous or vulnerable communities, involve displacement of affected communities; projects which fall under Annex I or II of the EIA Directive; or those which impact protected areas and areas of high biodiversity value. Standard 11 needs to include a requirement for the EIB to carry out site visits, engage with affected communities and arrange third party audits in such cases;
- EIB clients and the EIB must be **required to publish information (name, sector and location) on their websites at least on sub-projects which are likely to have significant effects on the environment (Annex I and II of the EIA Directive) and projects which may have serious social impacts, before they are approved for financing by the EIB;**
- EIB clients must be **required to provide environmental and social information** to the EIB so it can review their due diligence;
- Ensure that the EIB is involved in **monitoring and ensuring any corrective action** for ongoing FI sub-projects on the referral list and clearly state this in the loan contracts.

[29] Former IFC CEO Philippe Le Houérou in 'Opinion: A new IFC vision for greening banks in emerging markets', *Devex*, 8 October 2018: '*...we have eliminated our general-purpose loans to any financial intermediaries; we now ring-fence about 95 percent of our lending to financial intermediaries…*'

Annex 1 - Extracts of relevant bank policies

Environmental standards, screening and due diligence

As mentioned above, the European Bank for Reconstruction and Development (EBRD) has developed a 'referral list' for higher risk projects,[30] to ensure it both assesses risk categorisation and monitors environmental and social standards implementation itself in higher-risk sub-projects. Its Performance Requirement 9 (PR9) states that: '*The FI Referral List, included as Appendix A to this PR, lists a number of activities with particularly high environmental and social risks. Where a sub-project includes activities listed in Appendix A to this PR, the FI will refer that sub-project to EBRD*.'

The EBRD's Referral List

The financing by FIs of the following environmentally or socially sensitive business activities financed with EBRD funds is subject to referral to EBRD:

The principal Performance Requirement that proposed transactions will be expected to meet is indicated in italics.

(i) Activities involving involuntary resettlement - *EBRD Performance Requirement 5*

(ii) Activities that occur within or have the potential to adversely affect an area that is protected through legal or other effective means, and/or is internationally recognised, or proposed for such status by national governments, sites of scientific interest, habitats of rare/endangered species, fisheries of economic importance, and primary/old growth forests of ecological significance - *EBRD Performance Requirement 6*

(iii) Activities within, adjacent to, or upstream of land occupied by indigenous peoples and/or vulnerable groups including lands and watercourses used for subsistence activities such as livestock grazing, hunting, or fishing - *EBRD Performance Requirement 7*

(iv) Activities which may affect adversely sites of cultural or archaeological significance -*EBRD Performance Requirement 8*

(v) Activities in the nuclear fuel production cycle (uranium mining, production, enrichment, storage or transport of nuclear fuels)

(vi) Energy generation using nuclear fuels (excluding electricity import/export)

(vii) Activities involving the release of GMOs into the natural environment – *EBRD Performance Requirement 6*

(viii) Any micro, small or medium-sized HPPs that do not trigger Category A requirements – *EBRD Eligibility Criteria for Small Hydropower Plant Projects*

(ix) Any Category A projects included as Appendix 2 to the EBRD Environmental and Social Policy

The China-led Asian Infrastructure Investment Bank has recently revised its Environmental and Social Framework[31] to include increased AIIB staff responsibility for monitoring and supervision

[30] The 2019 EBRD Environmental and Social Policy can be found here.
[31] Available here.

of what it calls 'Higher Risk Activities' funded via FIs. The AIIB has prior approval of high-risk sub projects.

Prior Approval of Higher Risk Activities at the AIIB

(a) For all Higher Risk Activities proposed for Bank financing, the Bank requires the FI to furnish its detailed environmental and social due diligence assessment and instruments for the Bank's prior review and approval.

(b) If, following the Bank's review of a suitable number of Higher Risk Activities as in (a) above, the FI has demonstrated to the Bank's satisfaction that its assessment and management of the environmental and social risks of the Bank-supported activities are robust enough not to require the Bank's prior review and approval of all such activities, the Bank may instead require prior review and approval of only a subset of such activities, such subset to include all Category A activities proposed for Bank support.

(c) As an alternative to the above paragraphs (a) and (b) of this Section, the Bank may ex ante exclude Higher Risk Activities from Bank support under the Project or retain the right to decline to participate in investments in such activities.

27.4 Information on Other Activities. The Bank requires the FI to furnish to it, at the Bank's request, relevant environmental and social information for all activities for which the Bank does not require prior approval.

27.5 Equity Funds. In FI Projects where the Bank provides financing for a private equity fund that invests in subfunds, and prior review and approval of Higher Risk Activities is not feasible, the Bank instead requires that the fund exclude investments in Higher Risk Activities or that the Bank retain the right to decline to participate in such investments.

The AIIB defines Higher Risk Activities as '*a) all Category A activities; and (b) selected Category B activities, as determined by the Bank, that may potentially result in: (i) Land Acquisition or Involuntary Resettlement, (ii) risk of adverse impacts on Indigenous Peoples and/or vulnerable groups, (iii) significant risks to or impacts on the environment, community health and safety, biodiversity, and cultural resources, (iv) significant retrenchment of more than 20% of direct employees and recurrent contractors, and/or (iv) significant occupational health and safety risks.*' This definition should still be tightened with regard to environmental impacts, but is nevertheless more than the current EIB draft has.

Green Climate Fund

The GCF's environmental and social policy[32] is not very detailed overall, but lays out an approach in which its intermediating entities are accredited to different levels, which allow them to finance projects of varying risk levels. This approach has the advantage of automatically excluding low-capacity banks from undertaking risky projects.

In addition, although due diligence is generally delegated to the accredited entities, the GCF checks and confirms the proposed environmental and social risk category for the sub-projects, which means high-risk projects are by default brought to its attention.

GCF will review the environmental and social screening of the activities proposed for GCF financing, and confirm the environmental and social risk category assigned by the accredited entity based on the screening. In reviewing, GCF will confirm that the risk category of the proposed activity is appropriate to the risk level at which the entities have been accredited and consistent with the

[32] Available here.

accredited entities' requirements, the GCF ESS standards, and the considerations and definitions set out in paragraphs 25 to 32 of this policy. If it is inconsistent, GCF will require the accredited entity to reflect the appropriate category. Only activities with risk categories that are within the accredited entity's accreditation level will be considered for GCF financing.

Transparency and disclosure

The Green Climate Fund

The Green Climate Fund (GCF) is a highly relevant institution for the purposes of comparison with the EIB's FI lending, since 100 per cent of its lending is carried out through intermediaries (or as the GCF calls them, 'Accredited Entities'). The GCF has adopted a high degree of disclosure in line with international best practice, including time-bound disclosure of crucial project information – such as environmental and social impact assessments – ahead of approval. The degree and timing of disclosure is calibrated according to the risk profile of the investment: with more and better disclosure for the highest risk (Category A). The following excerpts from its 2016 Information Disclosure Policy describe the degree of disclosure:

> *Environmental and social reports.*
>
> *With respect to project and programme funding proposals that have an environmental or social impact, the Accredited Entities (AE's) shall disclose and announce to the public and, via the Secretariat, to the Board and Active Observers:*
>
> *(a) in case of Category A projects, the Environmental and Social Impacts Assessment (ESIA) and an Environmental and Social Management Plan (ESMP) at least 120 days in advance of the AE's or GCF's Board decision, whichever is earlier;*
>
> *(b) in the case of Category I-1 programmes, the Environmental and Social Management System (ESMS) at least 120 days in advance of the AE's or GCF's Board decision, whichever is earlier;*
>
> *(c) in the case of Category B projects, the ESIA and an Environmental and Social Management Plan (ESMP) at least 30 days in advance of the AE's or GCF's Board decision, whichever is earlier; and*
>
> *(d) in the case of Category I-2 programmes, the ESMS at least 30 days in advance of the AE's or GCF's Board decision, whichever is earlier.*

The GCF expects its conditions to be met when working with other multilaterals, raising the possibility that the EIB will be obliged to improve disclosure if it works with the GCF. For example, in the case of the GCF's involvement with the EBRD's Green Cities Project, the GCF's Board stipulated additional conditions:

> *In relation to each Category A public sector sub-project to be funded under the Facility, the Accredited Entity shall disclose the Project Summary Document, Environmental and Social Impacts Assessment (ESIA) and Environmental and Social Action Plan (ESAP), and, as*

appropriate, inclusive of the Resettlement Policy Framework (RPF) and/or Land Acquisition and/or Resettlement Action Plan (LARAP or RAP), and any other associated information required to be disclosed in accordance with the Accredited Entity's Public Information Policy ("Project Disclosure Package"). The Accredited Entity, 120 calendar days in advance of its Board meeting, shall disclose, in English and the local language (if not English), the Project Disclosure Package on its website and shall require that the Borrower does so in locations convenient to affected peoples, and provide the Project Disclosure Package to the GCF Secretariat for further distribution to the Board and Active Observers and for posting on the GCF website.[33]

The World Bank

The World Bank invests in FIs and requires and practices a high degree of disclosure, including of sub-projects supported through commercial banks. Under the disclosure clause of the World Bank's 2013 Operational Procedure BP 4.03, the World Bank requires its FI clients to disclose as well as permit, in writing, the World Bank to disclose the summary of the Environmental and Social Impact Assessment (ESIA) of any sub-project considered high-risk (Category FI-1 and FI-2). In practice, however, the World Bank seems to go beyond summaries by disclosing full reports of impact assessments, mitigation plans, and resettlement plans.[34] Examples include the World Bank's investments in two Turkish banks, TKB and TSKB, for which the World Bank disclosed 208 documents relating to the investments and their sub-projects.

The International Finance Corporation

The International Finance Corporation (IFC) discloses different information depending on the type of FI client. It has made several significant reforms over the past five years, largely in response to civil society pressure and a number of highly damaging cases.[35]

In 2015, the IFC started to disclose all sub-projects supported via its private equity fund clients, and in 2017, the IFC applied this new rule retrospectively to all private equity fund clients since 2012: *'We publish the name, sector and location of every investment of our funds' portfolio companies.'*[36]

In a letter from Bank President David Malpass in March 2020, the IFC committed to further disclosure of its financial intermediary portfolio.[37] High-risk and selected medium-risk IFC financial intermediary clients must now annually '*report the name, sector, location by city, and sector for sub projects funded by the proceeds from IFC's [investments].*'

[33] Green Climate Fund, GCF/B.21/34: Decisions of the Board – twenty-first meeting of the Board, 17 – 20 October 2018, Annex XV List of conditions and recommendations, 71, 28 November 2018.
[34] Oxfam, Open Books, October 2018.
[35] See for example: AgriVie case in Uganda (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=180); GMR Kamalanga case in India (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=165); RCBC bank in the Philippines (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=1266); Ficohsa Honduras (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=209) and Dragon Capital Cambodia (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=212).
[36] International Finance Corporation, IFC's Work with Financial Intermediaries, 2015, and International Finance Corporation, Sustainable Practices for Private Equity Funds Business, 2017.
[37] Letter from the World Bank President to the US Treasury, 20 March 2020.

The European Bank for Reconstruction and Development (EBRD)

In 2019, the EBRD took steps to improve disclosure in FI lending. PR 9 of the Bank's Environmental and Social Policy states that:

> *PR 9.16: The FI will put in place a system for dealing with external communication on environmental and social matters. The FI will respond to such enquiries and concerns in a timely manner.*
>
> *FIs are also encouraged to publish their corporate environmental and social policy or a summary of their ESMS on their website, if available. FIs will list on their website the link to any publicly available environmental and social impact assessment (ESIA) reports for Category A sub-projects which they finance.* ***FIs will also publicly disclose information on the environmental and social risks of any sub-project referred to EBRD in accordance with paragraph 15 of this PR and the proposed mitigation measures to address such risks, subject to applicable regulatory constraints, market sensitivities or consent of the sponsor of the sub-project.*** (emphasis added)

The AIIB

The Asian Infrastructure Investment Bank's recently updated Environmental and Social Framework[38] puts it considerably ahead of the EIB's current draft FI Standard concerning information disclosure, requiring disclosure of environmental information on Category A sub-projects before approval and on other higher-risk projects within a year of financing:

AIIB: Environmental and Social Information Disclosed under FI Projects

In the case of an FI Project, disclose environmental and social information as follows:

21.1 FI Policy Overview. Disclose an overview of the FI's environmental and social policy and of the ESMS, including information on the IAM applicable to the Project and activities;

21.2 Private Equity Funds. In the case of an FI project involving a private equity fund, disclose the name, location and sector of the Client's portfolio companies supported by the Bank's financing within 12 months following financial closure of the investment; and 21.3 Higher Risk Activity Environmental and Social Documentation.

(a) For each Category A activity supported by the Bank under an FI Project, disclose the draft environmental and social assessment reports and documents referred to above in Section 20.1, Draft Environmental and Social Documentation, at least sixty (60) calendar days prior to final approval of the activity for inclusion in the Project. The Bank's Management may decide, based on the specific nature and scope of the FI project and the environmental and social risks and impacts of the activity, that a longer or a shorter disclosure period is appropriate.

(b) Disclose annual environmental and social documentation for all other Higher Risk Activities financed by the Bank under the Project during the preceding 12 months, unless such disclosure is subject to regulatory constraints, market sensitivities or consent of the sponsor, in which case, disclose the reasons for nondisclosure.

[38] Available here.



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