

Contribution to the EIB Environmental and Social Sustainability Framework Counter Balance - August 2021

*/ **COUNTER BALANCE** / is a European coalition of development and environmental non-governmental organisations (NGOs) with extensive experience working on development finance and the international financial institutions as well as campaigning to prevent negative impacts resulting from major infrastructure projects. Since 2007 and together with our member groups and partners, we have monitored the operations of the EIB in the field of climate action, and paid particular attention to EIB's investments in the energy sector. As part of this work, Counter Balance provided numerous inputs to public consultation processes organised by the EIB, including around the creation of its Climate Strategy or the revisions of its energy policies and environmental and social handbook. This collective contribution of our coalition builds on this previous work.*

Although we are glad to participate in the public consultation, we would like to voice out our concerns regarding the lack of consideration for civil society's recommendations.

The EIB staff has been well aware for years of the demands of civil society, especially with regards to Human Rights and the EIB's approach to financial intermediaries. Still, it decided so far to ignore them and continue with its status quo approach.

If the EIB wants to truly become the "EU Climate Bank" and step up its role outside of the EU, it needs to pay much higher attention to the impact of its investments on people and the environment. Human Rights abuses cannot be a side effect of development projects, whether "green" or not.

The review of the EIB Environmental and Social Sustainability Framework (EESF) is the opportunity for the EIB to prove that it can be a true leader, not only on tackling climate change, but also on how it deals with the environmental, social and human rights impacts of its operations. So far, this is a missed opportunity.

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.

In particular, we regret that the EIB did not even mention the existence of a study commissioned to the Danish Institute for Human Rights on the review of the EIB's social due diligence and internal procedures from a human rights perspective, and did not communicate about the findings of this study.

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.

We hope that our contribution, which was developed in collaboration with a range of other NGOs, human rights experts and other stakeholders, will be taken on board by the EIB so that it can truly contribute to an environmentally and socially just transition.

Please find below a summary of our key demands. We call on the EIB to adopt the following recommendations as a priority:

KEY DEMANDS

- 1.** The Policy should state that the EIB will undertake robust human rights due diligence at project level and require Human Rights Impact Assessment (HRIA) from the promoters for all projects where Human Rights Risks have been identified by the Bank.
- 2.** The EIB should develop a Human Rights Strategy and a related action plan, and commit in its Environmental and Social Policy to do so. The Policy would then become the "*EIB Group Environmental, Social and Human Rights Policy*" and should describe the Human Rights Framework of the EIB.
- 3.** The EIB should not approve any operation until standards are fully met, and until Environmental, Social and Human Rights Impact Assessments are completed.
- 4.** Reinforce the Policy so that it is clear that contractual clauses enshrine the standards in all EIB operations, enabling for suspension of contracts in case the standards are not implemented.

5. Reinforce Standard 11 to ensure that EIB's intermediated operations are subject to the same environmental and social standards, due diligence, monitoring and transparency as its direct lending. A specific provision on financial intermediaries should be added in the Policy to oblige financial intermediaries to conduct sub-projects due diligence in a transparent manner and provide relevant information to the EIB for all subprojects which require environmental and social impact assessment.

The EIB Environmental and Social policy:

- ⇒ The draft Policy does not bring any significant improvement to the current EIB Statement of Environmental and Social Principles and Standards. 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. The Policy should also clearly state that the EIB will not approve any operation until standards are fully met, and until Environmental and Social Impact Assessments (ESIAs) are completed.
- ⇒ 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:

The EIB should conduct dedicated ex-ante screening and Human Rights Risk Assessment (HRA).

When risks are identified under the HRA, 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 and provisions in the Policy. The EIB should include a clear statement affirming 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” and that it will develop specific policies on human rights defenders and protocols to prevent and respond to risks of reprisals.

- ⇒ A “do no harm” principle must be applied to ensure that the environment, biodiversity are not adversely affected by projects, and to ensure that projects do not exacerbate climate change impacts.
- ⇒ Gender dimensions need to be more systematically integrated in the Policy and the Standards. The EIB needs to increase its safeguards for women and other minority groups, and take intersectionality into account when assessing social and human rights impacts.
- ⇒ The EIB should dedicate sufficient budget and increase its expertise, especially on human rights and gender. The lack of staffing, expertise and dedicated resources is one of the main reasons explaining the gap between the EIB standards on paper and the reality of their implementation.
- ⇒ Include clear transparency requirements in the Policy, in particular about the EIB disclosing information on its due diligence and improving the disclosure of financial intermediaries. This should reinforce the Transparency Policy under review in 2021.

Environmental & Social Impacts & Risks

- ⇒ During the project due diligence, the EIB should screen for specific human rights risks. The risk assessment should indicate if a separate human rights impact assessment (HRIA) is required from the project promoter. If so, it should then be conducted in tandem with the environmental and social impact assessment (ESIA).
- ⇒ The decision on whether an EIA/ESIA or HRIA is to be required should be decided jointly by the EIB and the promoter. It should not be left only to the Promoter or national authorities’ decisions. The EIB should, in its appraisal, assess whether a project requires Environmental and Social Impact Assessment and/or Human Rights Impact Assessment. The outcome of this determination, including the justification, should be communicated publicly in the EIB’s appraisal documents.
- ⇒ EIA/ESIA need to be required before EIB’s approval. Conducting the ESIA for projects with granted permits misses the point, and prevents meaningful public participation and real assessment of alternatives. The EIB should not approve any operation until standards are fully met, and until Environmental, Social and Human Rights Impact Assessments are completed.

Stakeholder Engagement

- ⇒ The EIB is still placing too much trust in the promoter without having robust safeguards in place to ensure that the promoter is living up to its responsibilities. For public consultation to be more than a tick-the-box exercise, the EIB needs to make it a priority area of its planning, appraisal and monitoring processes, and should not leave all responsibilities to the project promoter. Hence, we call on the EIB to clarify its own responsibilities and reinforce its monitoring over stakeholder engagement in all projects it finances. The EIB should always verify the results of public participation, whether and how the concerns addressed with the competent authority or project promoter were given due consideration and were addressed.
- ⇒ All the obligations referred to in Standard 2 and the related Guidance Note for promoters on Stakeholder Engagement should be inserted in contracts between the EIB and promoters, including for intermediated operations. In the case of intermediated operations, these obligations should be transferred between clients and sub-clients. Such provisions also need to be included in the Policy.
- ⇒ The Standard should specify that “as early as possible” means when all options are still possible, including a “No project” option. It should reflect appropriately the timeframes for public consultation by specifying acceptable timeframes. At the moment, the draft standard leaves too much discretion to the project promoter to rush the consultation process.
- ⇒ The Standard should also include provisions requiring the promoter to identify all stakeholders including local civil society and others who might have an interest in, or may influence, the project. Special measures are needed to include those stakeholders that may be particularly affected and which are often not included in decision-making, such as women and other marginalized groups.
- ⇒ The draft Standard does not mention the right to free, prior and informed consent (FPIC) which is an important basis for meaningful stakeholder engagement with affected communities. The Standard should include provisions to ensure that the right to FPIC is implemented in a transparent and systematic manner, documented publicly in project documentation. For affected non-indigenous communities in cases of land and natural resource-based investments, the EIB and its standards should at a minimum refer to the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT).
- ⇒ The Standard should strengthen provisions requiring promoters to identify, mitigate and prevent risk of reprisals and report the instances of reprisals to the EIB. These provisions may not only be left as non-binding suggestions in the Guidance Note.

Biodiversity and Ecosystems

- ⇒ “No net biodiversity loss” should be replaced by the Habitats Directive terminology of “no significant negative impact on all species and habitats of national and international protection”. The concept of “No net biodiversity loss” is proving to be an ineffective concept that is extremely difficult to monitor and control. It relies on many assumptions covering the best-case scenario of all impacts on biodiversity and not the worst-case scenario as required by the Habitats Directive.
- ⇒ Biodiversity offsetting should not be allowed in any projects. When there is residual impact after the mitigation measures are implemented, the project should not be approved. Furthermore, impacts on habitat or species in one place cannot be offset in another place.
- ⇒ The EIB should include the no-go zones in its policy, following the categories outlined at: <http://banksandbiodiversity.org/>. This approach is not meant to replace strong safeguards for project assessment, but provides clarity and saves time and effort on assessing projects that should not go ahead. In particular outside the EU where environmental governance is often poor, providing simple and clear rules is much more likely to bring results than putting too much faith in assessments, mitigation measures and monitoring.
- ⇒ Standard 4 should take better into account the interrelationships between biodiversity and vulnerable social groups, particularly women and indigenous peoples. One of the most effective ways to safeguard biodiversity is to empower its traditional stewards to oversee its protections and manage its impacts. That there is hardly any engagement with the gender dimensions of biodiversity conservation is a major gap in the standard as written.

Involuntary Resettlement

- ⇒ People affected by resettlement should have improved standards of living after project completion. The resettlement process must involve a mutual agreement between affected people and the promoters, while ensuring that the process is safe and regulated. The EIB must ensure that affected people receive correct compensations for their material and immaterial properties, and that the new land where people will be relocated is suitable for living, culturally appropriate, and has all the basic facilities.
- ⇒ This also includes proper compensation for people who lack formal land tenure, and who are left insufficiently protected by Standard 6. The draft standard as written risks leaving unacknowledged indigenous peoples, Adivasi communities and other marginalized groups destitute in an effort to resettle.

Vulnerable Groups and Indigenous Peoples

- ⇒ The definition of indigenous people as it stands is extremely restrictive and makes the standard almost unusable. The EIB needs to review its criteria for assessing the applicability of its indigenous people's standard. The basis for deciding whether to apply the indigenous peoples' standard should be made publicly available with project documentation so that self-identifying indigenous communities can understand (and if necessary, dispute) how they are characterized by EIB clients.

Intermediated Finance

- ⇒ Standard 11 needs serious improvements, as it currently lags far behind other financial institutions. EIB's intermediated operations should be subject to the same environmental and social standards, due diligence, monitoring and transparency as its direct lending, which is currently not the case. Standard 11 should also cover both the EIB and the EIF, as the EIF is a major player in the intermediated finance field.
- ⇒ The EIB should adopt a 'referral list' approach, where higher risk sub-projects are clearly defined, and therefore automatically flagged and given higher attention, including by EIB staff. This should include sub-projects which may have human rights implications, affect indigenous or vulnerable communities, involve displacement of affected communities, support fossil fuels, or those which impact protected areas and areas of high biodiversity value. Standard 11 needs to specify what this enhanced attention means and should include the EIB being required to carry out site visits, to engage with affected communities and arrange third party audits.
- ⇒ The EIB should commit to principles of disclosure and transparency and enshrine best practice, at least in line with other peer institutions, including:
 - Requiring time-bound disclosure of sub-project information in advance of allocation list approval, in line with best practice;
 - Disclosure of the name, sector and location of higher risk sub-projects financed via FIs on EIB's website and on the FI client's website;
 - Disclosure obligations for Financial Intermediary regarding the environmental and social information
 - Obligation for FI to provide the EIB with environmental and social documents
 - Disclosure of EIB's involvement in sub-projects at the project sites, ensuring that it is clearly visible and understandable to affected communities.