

Joint CSO Submission
Standard 1 Environmental and Social Impacts & Risks

August 2021

1. Objectives

The Standard misses the most important objective for which EIA/ESIA was at all established. It is to fully integrate environmental (human rights and social) considerations in decision-making on whether to permit proposed activities. Thus the EIB in its due diligence, should establish if the EIA/ESIA, understood as a process, will ensure that environmental and social considerations will be taken into account in decisions whether to permit or licence the project. While in the EU we can more or less assume that the process is correct, for projects outside the EU, this assumption cannot be taken for granted. Conducting the ESIA for projects with granted permits misses the point of conducting ESIA, and prevents meaningful public participation and real assessment of alternatives.

Also the process needs to take impacts, risks **and alternatives** in account. The consideration of alternatives begins early in the process (at the scoping stage/initial examination, before the type and scale and location have been agreed on. The public also needs to be involved in the discussion of alternatives

Therefore, the point should be changed as follow:

*3 This Standard outlines the promoter's responsibilities with regard to the process of assessing the potential environmental, climate, **human rights** and/or social impacts and risks associated with the project **and its alternatives, to fully integrate them in decision-making on whether to permit proposed activity**, and developing and implementing procedures for managing and monitoring these impacts and risks throughout the EIB's project cycle, specifically: (...)*

2. General requirements

In our view, the EIB should not approve any operation until all its standards are fully met, and until Environmental, Social and/or Human Rights Impact Assessments are completed. EIB should keep its current requirement that promoters must apply the European Principles for the Environment and the UN Guiding Principles on Business and Human Rights. Also the bank needs to require that human rights considerations are given due attention in the Human Rights Impact Assessment. Considerations on human rights should not only be restricted to social impacts; environmental impacts can also have major human rights implications which aren't 'social' per se. Therefore, in cases established by the EIB's own human rights risk assessment, a stand-alone Human Rights Impact Assessment should be required. Therefore, the point 7 should be changed as follows:

*7 All projects located in the rest of the world shall comply with applicable national legislation, **EIB's Environmental and Social Standards and** align with the principles of EU legislation relevant to the assessment and management of environmental, climate, **human rights** and/or social impacts and risks, particularly those contained in the EIA Directive, as set out in the remaining sections of this Standard. Those projects that are likely to have significant environmental, climate, **human rights** and/or social impacts shall be subject to an Environmental and/or Social Impact Assessment (ESIA) process **and/or Human Rights Impact Assessment**. The assessment of any social aspects is fully embedded in this process and should include considerations of potential human rights risks. **EIB-supported operations, independently of the form of financial commitment, apply the European Principles for the Environment and the UN Guiding Principles on Business and Human Rights.**¹*

Strategic Environmental Assessments

We noted that provisions related to Strategic Environmental Assessments to a large extent disappeared from the new Standard 1.

The EIB should keep the previous provisions and enhance them by requiring that whenever it finances a project (usually in case of public sector promoters), irrespectively of its location, which is a part of a plan or program, it should be a subject of the SEA process. The EIB shall develop in the Standard 1 criteria for determining whether SEA should be required.

3. Specific requirements

Environmental Impact Assessment (EIA) process for projects located in the EU, EFTA, Candidate and potential Candidate Countries

In cases of projects listed in Annex II to the EIA Directive in respect of which the relevant competent authorities have concluded that an EIA is not required, the bank should nevertheless satisfy itself during appraisal that this decision complies with the EIB's standard. Therefore, in such cases EIB should be obliged to request the promoter to provide the bank with the relevant decision and its justification. EIB should require the promoter to always provide information provided to authorities on which a decision was based and the EIB should verify if a decision complies with the EIB's Standards and it should guarantee itself the rights to require EIA despite the authority decision. The point 10 should be changes as follows:

10 For all projects listed in Annex II to the EIA Directive in respect of which the relevant competent authorities have concluded that an EIA is not required, the promoter shall provide, ~~upon request,~~ the EIB with:

¹ The EIB Environment and Social Handbook (2013). The EIB Statement of Environmental and Social Principles and Standards 2009 includes the following principles for the Environment: the precautionary principle, the prevention principle, the principle that environmental damage should as a priority be rectified at source and that the polluter pays principle.

a. The information submitted to the relevant competent authorities and used as a basis of their determination (as specified in Annex II.A to the EIA Directive); and,

b. The relevant decision that satisfies the requirements set out in the EIA Directive. The promoter shall implement the measures envisaged to avoid and prevent what might otherwise have constituted significant adverse effects on the environment, where applicable.

In case the EIB's environmental and social appraisal will determine the need for an EIA, the promoter will be responsible to make an application to the competent authority.

Environmental and Social Impact Assessment (ESIA) process for projects located in the rest of the world

The title of this chapter excludes the possibility that the promoter may be required to conduct Human Rights Impact Assessment which is separate to ESIA. Therefore, it should be reformulated as follows:

*Environmental and Social Impact Assessment (ESIA) and **Human Rights Impact Assessment** process for projects located in the rest of the world*

The EIB leaves determination of the EIA/ESIA entirely to the project promoter. This is far from the standard of other IFIs who determine the level of risk of operations and requirements related to EIA or ESIA and it is unacceptable to the CSOs. The EIB should amend the relevant provisions so as this determination will be conducted jointly by the EIB and the promoter. The determination for Human Rights Impact Assessment has been entirely omitted. The outcome of determination, including justification shall be communicated publicly in the EIB's appraisal documents. The provisions should be change as follow:

*17 An environmental and/or social impact assessment **and/or human rights impact assessment** is required for projects listed in Annex I to the EIA Directive and/or when an ESIA is required by national legislation or based on the determination carried out according to paragraphs 18 and 19 of this Standard.*

*18 For those projects listed in Annex II to the EIA Directive and/or in the national legislation, the need to carry out an environmental and/or social impact assessment **and/or human rights impact assessment** is determined through a case-by-case examination and taking into account the criteria specified in Annex 1a of this Standard.*

*19 In determining the need for an environmental and social impact assessment **and/or human rights impact assessment**, the promoter collects and provides the EIB with the information specified in Annex 1b of this Standard. The information should be comprehensive enough to provide the basis for the **EIB and promoter's** determination. The outcomes of the determination, including its justification, are communicated by the EIB in its appraisal documents ~~to the EIB upon request.~~*

The EIB should consider merging point 18 and 19 as it is unclear what is the difference between them, the determination of the need for EIA/ESIA should be based for all projects against the same criteria.

Also, if during the project implementation it turns out that the impacts are more significant than expected, and it had been previously determined that the project did not need an EIA/ESIA, the need for ESIA should be revised and the process initiated if a new determination finds significant impacts.

Determining the need for Human Rights Impact Assessment

During the project due diligence, the EIB should screen for specific human rights risks. This should be based on available human rights indicators for civil, political, economic, social and cultural rights, conflict related data or labour rights. Specific criteria linked to the nature of the project and the track record and risks linked to the client's profile should be included in additional Annex to the Standard 1. Sound indicators for assessing national and regional contexts need to be used, alongside sector specific indicators. When the risk screening identifies a high risk, a participatory and gender-sensitive human rights risk assessment (HRRRA) should be triggered during the project's appraisal process. There are already existing methodologies for such assessments, and they could be performed either by external experts or internally. The EIB's risk assessment should indicate if a specific 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). In such case the promoter should be required to engage relevant external expert to conduct human rights impact assessment (HRIA).

The EIB seems to articulate that high-risk projects (ones that require an ESIA) might also require an HRIA (Annex 1A of Standard 1), but even here, human rights are only a consideration if the area is already "known to have a high occurrence of... violation of human rights." The whole concept of human rights due diligence is to prevent any potential violations of human rights – this isn't restricted to situations where human rights violations are already ongoing. If the bank has identified environmental and social impacts of the project and requires ESIA, Human Rights Impact Assessment should be required automatically. This is because the role of the human rights due diligence is to explain how applying the EIB's environmental and social standards will remedy potential human rights impacts. Consequently, human rights due diligence is a prerequisite of the proper implementation of the environmental and social standards. More problematically, in Annex 1b of Standard 1, the EIB relies on the Promoter to provide a description of the "country context" for human rights. Often, potential borrowers are part of the systems and structures that oppress rightsholders. They are not qualified to be reporting on their home country's human rights context. HRIA should then be mandatory for all high-risk projects, which require ESIA and be published together with other due diligence documents.

Scope and Level of Detail of the Assessment

Scoping for ESIA should also include screening for specific social and human rights risks in addition to listed below. Therefore, the points 20 and 21 should be changed as follow:

*20 If deemed necessary by the EIB or required by national legislation, this step determines those environmental, climate, **human rights** and/or social impacts and risks as well as areas of concern that are likely to be of the utmost importance and should therefore be addressed in greater detail. The assessment should be commensurate with and proportionate to the potential impacts and risks. Their nature, likelihood and magnitude shape the scale and extent of the assessment, including those assessments/studies referred to in paragraph 8.*

*21 In order to identify the significant environmental, climate, **human rights** and social effects to be addressed in depth, the promoter should analyse the following aspects:*

a. The baseline studies required to understand the existing status of the environment, including the need for and level of detail of any additional investigations;

b. The prevailing socio-economic context and human rights situation in a country concerned and in the local context;

b2. Detailed mapping identifying stakeholders that are vulnerable, marginalised, discriminated against or excluded on the basis of their socio-economic characteristics, including evaluating the indigeneity of affected persons/groups;

c. The alternatives that ought to be considered, including the “do nothing” scenario;

*d. The methods to be used to predict the magnitude of environmental, climate and social effects; **and***

e. The criteria against which the significance of the effects should be evaluated;

f. The types of mitigation to be considered; and

g. The level of emissions of greenhouse gases.

Content of Human Rights Impact Assessment

In addition to requirements concerning the content of EIA and ESIA, the Standard 1 should also contain requirements concerning the content of HRIA. Therefore, the following provision should be added:

24 (new) Where a human rights impact assessment is required, the promoter shall prepare a report that takes into account all relevant stages of the project and includes, at a minimum, the information specified in Annex 2C of this Standard.

The relevant methodologies for conducting HRIA already exist and vast literature is available to help the EIB to develop Standard 1. We can recommend reading a World Bank report *Human Rights Impact Assessments: Review of the Literature, Differences with other forms of Assessments and Relevance for Development*, February 2013 and/or *Human Rights Impact Assessment Guidance and Toolbox*, the Danish Institute for Human Rights, 2016; or reaching out to Nomogaia (<https://nomogaia.org/>) who has developed own methodology.

4. Monitoring and reporting

We regret to notice that the EIB is proposing to considerably weaken the Standard 1 provisions related to Environmental and Social Management Plans, Organisation Capacity and Competencies, Emergency Prevention, Preparedness and Response Activities (this was entirely deleted from the Standard 1), Performance Management and Review. Instead of strengthening these provisions, a significant number of requirements for the promoters were simply deleted. It is hardly an understandable move at the time when the bank should seek to improve the quality of its projects and the promoters' responsibility for projects compliance with the EIB's Standards. It would be advisable for the EIB not to change these provisions as proposed in the draft new Standard.

Reporting requirements should be strengthened as they are disproportionately weak. Promoters should be required to monitor the environmental and social performance of the project to determine whether it is being implemented in accordance with the Standards, applicable legislation and financial agreement. During the monitoring the promoter should provide regular (not periodical) reports on:

- Any significant environmental and social risks and impacts identified during the environmental and social assessment process;
- Compliance with applicable Standards;
- Implementation of actions specified in the ESMP and ESMS;
- Implementation of corrective action plans which were established, such as those agreed in the process of EIB-Complaints Mechanism.
- Grievances received from workers and external stakeholders, and how they were resolved;
- Implementation of other regulatory monitoring and reporting requirements.

As a part of the stakeholder engagement plan, these reports should be made public both by the EIB and the promoter.

We believe that implementation and monitoring of the ESMP will not be effective and reliable if it does not engage with affected people. Therefore, the EIB Standard should require participatory monitoring for all ESMP.

5. The assessment of general corporate finance

We regret that the EIB completely ignored the requirements for assessments of corporate loans which simply disappeared and were not replaced by any new provisions in this draft Standard. The current Standard includes the following provisions which should be entirely restored as follow:

32. where promoters with multi-site operations are seeking from the EIB general corporate finance, working capital or equity financing, the assessment at project level as outlined in documents may not always be appropriate.

In such cases (as determined by the EIB), the promoter will commission a qualified and experienced, external specialist to conduct a corporate audit of their current environmental

and social management system (ESMS) and the company's past and current performance against EIB's E&S Standards. The audit should:

- assess the promoter's ability to manage and address all relevant social and environmental risks and impacts of its business and operations, in particular the issues identified in the Standards (including this Standard);
- assess the promoter's compliance record with applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international agreements;
- identify the company's main stakeholder groups and current stakeholder engagement activities.

33. The exact scope of the corporate audit will be agreed with the EIB on a case-by-case basis.

34. The ESMP should be incorporated into the promoter's corporate environmental and social management system. It will address any issues identified during the corporate audit by specifying time bound measures to achieve and maintain compliance with the EIB's Standards within a reasonable time frame.

List of signatories:

The logo for Actionaid, featuring the word "actionaid" in a bold, lowercase, red sans-serif font.

Action Aid International

The logo for Accountability Counsel, with "accountability" in a grey sans-serif font above "counsel" in a blue sans-serif font. To the left of "counsel" is a blue icon of three stylized human figures.

Accountability Counsel

The logo for Ecoaction, featuring the word "eкодія" in a bold, green, lowercase sans-serif font with a small orange square above the letter "о".

Ecoaction, Ukraine

The logo for Arab Watch Coalition, featuring a stylized orange eye icon with gear teeth for eyelashes, followed by the words "ARAB WATCH COALITION" in a bold, orange, uppercase sans-serif font.

Arab Watch Coalition

The logo for CEE Bankwatch Network, with "CEE" in white text inside a dark teal square, followed by "Bankwatch Network" in a teal sans-serif font.

CEE Bankwatch Network

The logo for Both ENDS, with "Both ENDS" in a bold, black, uppercase sans-serif font. Above the "o" in "Both" is a red and white circular icon. Below the text is a red horizontal bar with the tagline "Connecting people for change" in white text.

Both ENDS



Counter Balance



International Federation for Human Rights



Focus Association for Sustainable Development



Zaļā brīvība

Green Liberty, Latvia



Recourse



Za Zemiata



Alliance of Associations Polish Green Network



Nomogaia