

Joint CSO Submission

Standard 4 Biodiversity and Ecosystems

August 2021

General comments

These comments provide an overview of the main issues we see with the draft Biodiversity standard. They should be read in conjunction with the specific text changes attached to these comments.

1. No Net Loss of biodiversity is a concept that is proving ineffective, difficult to monitor and even more difficult to control and should not be used in this standard. The word 'Net' allows the destruction of biodiversity in a particular place, on the assumption that biodiversity will be protected somewhere else. For example in projects like the [Shuakhevi hydropower plant](#), where the destruction of river habitats and the disappearing of fish and otter populations is supposed to be offset by planting artificial forests. The project's EIA/ESIA report and biodiversity management plan based on the No Net Loss principle rely on incorrect assumptions about the impacts of the project and the mitigation/compensation/offsetting measures.

We suggest using the concept of "No Loss of Biodiversity" in line with Article 6.2. of the Habitats Directive: "*avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species*". Although this article refers to special areas of conservation in the EU, the same standard should be applied to countries outside the EU where proper legal protection of such areas is lacking. EIB financing must not be granted to projects outside the EU that would never be permitted in the EU.

2. A major, overarching issue with Standard 4 is that it seems not to really take on board 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. Poor rural households and vulnerable and indigenous communities who depend on ecosystem services for their livelihoods and well-being are mentioned at the beginning of this standard and women are mentioned under ecosystem services assessments, but all in a rather general way. This suggests that the EIB has not internalized the fact that bypassing indigenous rights jeopardizes biodiversity goals. Likewise, worldwide, the population group that interacts most with biodiversity -- gathering water and medicinal plants, rotating crops, conducting foraging -- is women. That there is hardly any exploration of the gender dimensions of biodiversity conservation is a major gap in the standard as written.

3. The EIB has, in its questionnaire, stated that it does not believe that No Go Areas should be implemented as it would be almost impossible to cover all the specific areas needing to be covered. We need to point out, however, that this approach is not meant to *replace* strong safeguards for project assessment, it is only meant to provide clarity and save time and effort on assessing projects that should never ultimately go ahead, leaving more capacity to concentrate on projects for which the situation is less clear.

In particular outside the EU where environmental governance is often very poor, providing simple and clear rules is much more likely to bring results than putting too much faith in assessments, mitigation measures and monitoring. Therefore we still propose that the EIB

should include the no-go zones in its policy, following the categories outlined at: <http://banksandbiodiversity.org/>.

Moreover, at the online consultation, in response to a question on no-go zones, the bank staff stated that the bank cannot go beyond EU law, as an EU bank. We cannot agree. The EIB exists to provide added value, to send signals to the market, and to lead the way in pioneering the type of investments that the EU and other countries need to tackle the climate and environmental emergencies we are facing.

In addition, EU law and EU policies are not always well-aligned - for example the 2030 Biodiversity Strategy seeks to restore 25,000 km of free-flowing rivers but EU law allows the construction of new hydropower plants. This means that the EIB should not merely finance everything which is legal, but should set higher standards to finance only those projects which are truly contributing to EU policy and/or the goals of international conventions. The EIB should therefore prioritise investments in decommissioning or, when relevant, environmental refurbishment of existing hydropower plants.

In the energy sector, the EIB has already gone well beyond EU law by phasing out financing for virtually all fossil fuel projects. This type of leadership is what we expect from the EIB in other areas as well, including on biodiversity. This is all the more the case given the objective of the EIB to transform into the “EU Climate Bank”.

3. All protected natural habitats and habitats of species should be treated as ‘critical habitat’ or ‘high-value biodiversity’. These include, but are not limited to habitats and species listed in Resolutions 4 and 6 of the Bern Convention, Annexes 1 and 2 of the Habitats Directive, Annex 1 of the Birds Directive and in similar international legislation outside Europe, as well as those listed in national, international or regional red data books. The methodology for defining the so-called ‘critical habitat’ and ‘high-value biodiversity’ is not defined in the Habitats Directive nor the Bern Convention and as such should not contradict their provisions, especially in cases when the project affects Natura 2000 sites, Emerald sites or other protected sites. According to the Bern Convention, “*areas of special conservation interest are areas that contain an important and/or representative sample of endangered habitat types that and/or contribute substantially to the survival of threatened species or any species listed in Appendices of the Convention*”. As a result, all habitats and species subject to protection in the proposed, candidate or declared sites should be assessed as ‘critical habitat’ or ‘high-value biodiversity’.

4. Paragraph 8 needs to include not only EU Candidate and potential Candidate countries, but also countries which have bilateral agreements with the EU entailing environmental obligations, for example the Association Agreements signed with Georgia, Moldova and Ukraine, which include obligations to apply parts of the Water Framework Directive and Habitats Directive.

5. Paragraph 9 uses unclear language such as to “align” with EU legislation instead of *complying*, and “international good practices” instead of *international conventions and/or treaties*, which implies that they are not obligatory. The “where required” at the end also adds to the confusion. We have proposed specific language in the text in tracked changes, but also propose to explain more how this works in reality.

6. The Standard is missing any reference to strategic level planning and assessment. Concentrating solely on environmental impact assessment and appropriate assessment is unlikely to prevent cumulative impacts and fragmentation, particularly outside of the EU. Lack of strategic planning, poor spatial planning and unacceptable cumulative impacts is a common problem in most countries, but outside the EU it can be particularly unclear how to address this. The EIB needs to set out what its approach will be. All projects need to be part of publicly consulted and coherent spatial plans and sectoral strategic plans, which have been subject to

strategic environmental assessments. Sectoral strategies and plans also need to truly justify the need for the project, not simply to state that projects are “strategic”. The EIB’s 2019 [hydropower guidelines](#) were much stronger on this issue and at least some general requirements need to be included in the Standard.

7. The provisions on *Legally protected areas or internationally recognised areas of biodiversity value* outside of the EU are too weak and need to be strengthened in line with the [European Principles for the Environment](#), in which the signatories commit that projects outside of the EU must comply with EU environmental principles, practices and standards. The impacts on all species and habitats subject to protection in these areas (see comment 3) need to be assessed and quantified using an Appropriate Assessment in line with Article 6.3 of the Habitats Directive. The Appropriate Assessment (AA) should be obligatory for projects likely to have a significant effect, either individually or in combination with other plans or projects, not only in protected or recognized areas in the EU, but also an AA-like process must be carried in such areas outside the EU, even those worth designating for protection but not yet designated. It should assess the impacts on all protected habitats and species without preliminary screening or exclusion (before the AA). To illustrate, for the [Amulsar Gold Mine in Armenia](#) (IFC, EBRD) 11 natural habitats and 76 species of international and/or national importance were registered, but only 2 species were assessed as critical habitat species and only for them No Net Loss on biodiversity was measured.

A project can be implemented only if its residual impacts do not affect adversely the site and its integrity in the light and for the purposes of preservation of the favourable conservation status of habitats and species protected in the site.

8. Projects located in a Natura 2000 site designated as special areas of conservation can only be financed if the Natura 2000 site has an appropriate management plan in place, as required by the EU Habitats Directive.

9. Biodiversity offsetting is a term not defined by the Habitats Directive and anything broader than the compensation measures defined in Articles 6.4. and 6.5. should not be allowed in any projects. Even in countries with relatively strong environmental governance like Germany, studies have revealed that a substantial proportion of offsets failed to achieve their objectives and no overall evaluation of the country’s Impact Mitigation Regulation instrument has been carried out. A review of compensatory measures in Rheinland-Pfalz identified that, in practice, many planted trees died and weren’t replaced, meadows were abandoned and compensation areas near settlements were claimed by neighbours and used as an extension of their gardens. Little evidence is easily accessible online about the success or failure of individual offsetting schemes, but given the poor environmental governance in most countries, the likelihood of such schemes working is negligible.

10. Regarding compensation measures, in order to carry out a plan or project with residual impacts all three conditions should be met in line with Articles 6.4. and 6.5.:

- a. absence of alternative solutions
- b. imperative reasons of overriding public interest
- c. the compensation measures to be implemented before actual destruction has been produced.

According to European Court of Justice rulings, compensation measures must be implemented before the impacts appear in order to maintain effectively the coherence of the ecological network. If an exception is made, because of proven “overriding public interest” this procedure should follow the Article 6.3 assessment and the effectiveness of the compensation measures undertaken must be assessed against the conservation objectives of the site and the adverse impact and residual effects established during the assessment.

If priority natural habitat type and/or a priority species are adversely affected and residual impacts exist (such species is for example Brown Bear *Ursus arctos*), the only considerations which may be raised, under the second subparagraph of Article 6(4) of Directive 92/43, are those relating to human health or public safety.

11. The point about adaptive management should be deleted because the concept is misused not to plan anything before monitoring shows there is a problem for biodiversity. Afterwards, poor monitoring often doesn't show any problems. For example in the [Nenskra Hydropower Project](#) all measures for fish species will be implemented if monitoring shows declining populations. The precautionary principle of the EU should be applied for these cases and for all EIB finance - "*where scientific data do not permit a complete evaluation of the risk*" or when the project promoter cannot prove the absence of future impacts, the project should not be approved.



Alliance of Associations Polish Green Network



Counter Balance



CEE Bankwatch Network



Both ENDS



Arab Watch Coalition



Ecoaction, Ukraine



Focus Association for Sustainable Development Slovenia



Zaļā brīvība

Green Liberty, Latvia



Making finance accountable to people and planet

Recourse



Za Zemiata, Bulgaria