

CAN THE EIB BECOME THE “EU DEVELOPMENT BANK”?

A critical view on EIB
operations outside Europe

November 2020

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Counter Balance is a coalition of 9 NGOs whose mission is to make European public finance a key driver of the transition towards socially and environmentally sustainable and equitable societies. Over the last decade, we have monitored extensively the operations of the EIB and led campaigns to make it a more sustainable, democratic and transparent institution.

More information is available at:
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Authors:

Aleksandra Antonowicz-Cyglicka
Clara Bourgin
Anna Roggenbuck
Xavier Sol

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their valuable contributions to the report:**

Isabelle Brachet
Jan Callewaert
Pippa Gallop
Emily Gray
Lotte Hughes
Adrien Lesage
Nina Lesikhina
Ido Liven
Anirudha Nagar
Maria Jose Romero

GRAPHIC DESIGN

Liesbeth Boucher

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GLOSSARY

DFIs

Development Finance Institutions are specialised development banks that are usually majority owned by national governments

EBRD

The European Bank for Reconstruction and Development is a multilateral developmental investment bank owned by 69 countries from five continents, as well as the European Union and the EIB

EIB

The European Investment Bank is the financial arm of the European Union owned by the 27 EU Member States

EIF

The European Investment Fund – part of the EIB Group – is a provider of risk finance to benefit small and medium sized enterprises (SMEs) across Europe

ELM

The External Lending Mandate is a mandate of the European Union guiding most of EIB's operations outside Europe, and under which the EIB accesses budgetary support to guarantee its operations

ERI

The Economic Resilience Initiative was launched in 2016 as part of the ERI to support Europe's Southern Neighbourhood and the Western Balkans

MDBs

Multilateral Development Banks are development banks established by more than one country

PPPs

Public Private Partnerships are contracts where a private company provides infrastructure and services that have traditionally been provided by the public sector (such as schools, roads, railways and hospitals)

EXECUTIVE SUMMARY

The European Investment Bank's (EIB) role in supporting EU development policies is being increasingly discussed. Now that the EIB is planning to step up its development role and create a dedicated branch for this purpose, the European Sustainable Development Bank, an important question emerges: **is the EIB fit for the task of becoming the "EU Development Bank"?**

This report analyses the EIB's track record in the development field and offers a series of detailed recommendations for fundamental reforms at the EIB, so that the Bank can better support partner countries' development priorities and ultimately become a credible candidate for the "EU Development Bank" seat.

The report is illustrated by numerous case studies of EIB-financed projects all around the world, from Kenya to Nepal and Bosnia and Herzegovina to Georgia. In solidarity with local communities, we have documented the too often harmful impacts of projects financed under the Bank's development mandate. We hope that this report can be a wake-up call that will prompt the EIB to clean up its act.

/ NOT YET A DEVELOPMENT BANK /

The EIB still lacks a clear development orientation, as it pays too limited attention to the development impacts of its operations and does not have enough expertise or sufficient presence on the ground to provide genuine added-value outside of Europe.

Another question relates to the type of development model that is supported by the EIB. Indeed, its operations outside Europe tend to favor an outdated and problematic development model which ultimately exacerbates inequalities rather than alleviates them. This includes:

AN EXTRACTIVIST MODEL PUSHED THROUGH INFRASTRUCTURE MEGA-CORRIDORS

The EIB has been a key driving force behind the recent wave of large-scale infrastructure projects taking place as part of a new global infrastructure agenda, strongly supporting the expansion of ports, roads for exporting raw materials, airports, special economic zones and logistics centres. There is, however, a real threat that public finance is actually captured by this agenda, to the detriment of the broader society. Public banks like the EIB should aim to support infrastructure that prioritises social and environmental justice, instead of scaling up efforts to financialise infrastructure projects that are disconnected from the needs of citizens and prove harmful for the poorest and most marginalised communities.

A BLIND OVERRELIANCE ON THE PRIVATE SECTOR

Over the last decade, the EIB has been following a growing trend in the EU development agenda: triggering private investments through the leverage of scarce public resources. However, through this strategy the EIB ends up subsidising large companies and multinationals, enabling them to make profits in the poorest regions of the world, under development operations backed by a budget derived from taxpayers' money. Relying on private finance is also not a silver bullet, with the historical track record showing that private finance has often been ineffective in financing public goods and infrastructure, and has caused financial vulnerabilities. A development bank's primary focus should not be to translate development goals into "bankable projects" and create a conducive investment climate for the private sector.

THE OPAQUE USE OF FINANCIAL INTERMEDIARIES

Supporting SMEs and local private sector development is one of the EIB's objectives under its external mandate. In order to reach this objective, the Bank does not lend directly to a project, but instead uses "financial intermediaries". This practice, however, comes with a number of important challenges that may undermine positive development impacts, including lack of transparency, insufficient control over funds and the risk of corruption and fraud, which up to now have not been properly addressed by the EIB. Another problem relates to the nature of the financial intermediaries with whom the EIB works, which are mostly western commercial banks with little or no interest in development that often operate from tax havens. The use of private equity funds is also particularly concerning, given their focus on high returns and profit maximisation, which clearly contradicts a "pro-poor" approach.

/ EMPTY PROMISES ON HUMAN RIGHTS /

The EIB, as the EU Bank and a key actor in development finance, has the legal and moral duty to give adequate consideration to the human rights context of the projects it finances and to better assess and mitigate the human rights impacts that these projects may cause. Despite commitments to follow a human rights-based approach and the United Nations Guiding Principles on Business and Human Rights, the Bank has so far not developed proper human rights due diligence and regularly fails to require Human Rights Impact Assessments for its projects. As a result, the Bank frequently supports projects that cause or contribute to human rights violations.

The EIB does not have a clear enough policy statement, an overarching human rights strategy or adequate systems at the project level. The existing social safeguards neither sufficiently prevent intimidation, threats and forced evictions nor protect the existence and well being of the most vulnerable project stakeholders.

This operational weakness is unfortunately matched by a lack of political willingness – human rights issues have been given a low priority by the EIB Management Committee for years. Too often, the Bank hides behind the political greenlight to operate in a given country, ignoring its responsibilities at the project level.

THE NEED FOR A SOLID HUMAN RIGHTS FRAMEWORK

The EIB needs a mechanism in place to ensure proper human rights due diligence. A comprehensive solution would be to develop a solid three pillar Human Rights Framework consisting of:

>> A strong Statement on Environmental, Social and Human Rights Principles and Standards (replacing the existing Statement on Environmental and Social Principles and Standards).

>> A new Human Rights Strategy, which integrates specific policies on human rights defenders; explains how human rights specific risks and impacts are considered, prevented and mitigated; and describes how the Bank will promote a human rights-based approach among its stakeholders, clients and counterparts.

>> A sound system of human rights due diligence at the project level, via dedicated ex-ante screening and human rights risk assessment conducted by the Bank, a required human rights impact assessment from the client when risks are identified, and continuous monitoring of the situation on the ground. This due diligence system should be integrated in a new Standard on human rights due diligence.

There is also room for the European Commission and European External Action Service to play a more active role in the appraisal process at the EIB. Before approving a project, the Commission should ensure that the EIB has properly assessed human rights risks early in the project cycle, and it should oppose the project when red flags emerge.

/ MAJOR FLAWS IN STANDARDS AND THEIR IMPLEMENTATION /

A LONG WAY TO GO ON TRANSPARENCY

The EIB still fails to comply with transparency requirements from its own transparency policy and EU legislation, and lags behind the transparency and disclosure practices of other multilateral financial institutions. For instance, despite having created a public register of documents, the EIB still fails to disclose all relevant project related documents or fails to disclose them in a timely manner. Furthermore, the EIB provides next to no information on where the money from its intermediated operations ends up. The EIB should review its transparency policy to clarify disclosure obligations for itself and clients and align it with the best practices of other multilateral financial institutions.

ENVIRONMENTAL & SOCIAL STANDARDS: UNCLEAR OBLIGATIONS AND WEAK MONITORING

Although the EIB is already supposed to trigger sound environmental and social due diligence, the Bank's due diligence and monitoring of projects' compliance with its standards remains superficial. Indeed, the gap between its policies and their implementation on the ground remains a key issue at the Bank. For instance, despite policy commitments to protect the rights of indigenous peoples, the EIB still finances projects which violate these rights. The EIB's due diligence process must be urgently strengthened to enhance the quality of projects' environmental and social assessments, compliance with the Bank's indigenous peoples' standard, resettlement standards and stakeholder engagement.

EIB, NOT A DEVELOPMENT BANK YET

The EIB wants to become the “EU Development Bank”, but it cannot fulfil that role as of today.

5 REASONS WHY THE EIB IS NOT A DEVELOPMENT BANK YET:



IT SUPPORTS A QUESTIONABLE DEVELOPMENT MODEL BASED ON THE EXTRACTION OF NATURAL AND FINANCIAL RESOURCES



IT CONTRIBUTES TO HUMAN RIGHTS ABUSES



IT REPEATEDLY IGNORES ITS OWN ENVIRONMENTAL AND SOCIAL STANDARDS



IT LACKS TRANSPARENCY



IT IS NOT ACCOUNTABLE TOWARDS AFFECTED COMMUNITIES

CONCLUSION:

Without fundamental reforms, the EIB should not be awarded the “EU Development Bank” label



I N T R O D U C T I O N

Setting the scene: **why would the EIB become the “EU Development Bank”?**

The European Investment Bank (EIB) is the largest multilateral lender in the world. As the financial arm of the European Union, the EIB is best known for its role in financing projects and corporations all across Europe. In recent years, this central position within the EU has expanded, in particular with the Bank's pivotal role in the Juncker Plan, and more recently its role at the core of the EU's economic recovery response to the COVID-19 crisis.

But what remains unknown to most citizens is that **the EIB is also a major development bank**: for the last decade, around 10% of its lending has taken place outside of Europe in support of European development policies in more than 140 countries. From 2010 to 2019, a total of €69.6 billion was invested, mostly in Africa, the Balkans, the Middle East and Europe's Eastern Neighbourhood. In 2019 alone, financing outside of Europe was worth €7.9 billion.

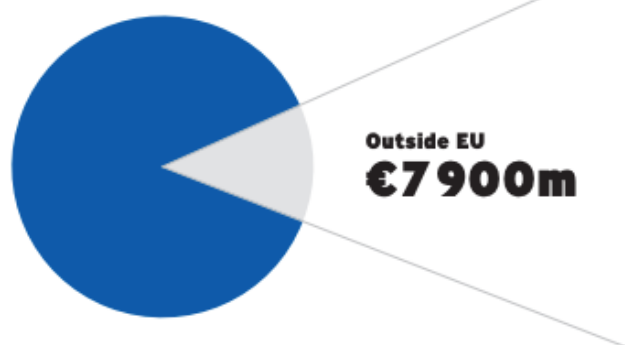
Geographical breakdown of signatures (€ million)

Total:

€63 250m

European Union

€55 350m



Outside EU
€7 900m

€762m	European Free Trade Association (EFTA) and enlargement countries
€1 300m	Eastern neighbours
€2 261m	Southern neighbours
€1 400m	African, Caribbean and Pacific Countries (ACP) – Overseas Countries and Territories (OCT)
€2 177m	Asia and Latin America

Breakdown by region of EIB signatures outside of the EU in 2019¹

/ A SPECIFIC ROLE IN SUPPORT OF EUROPEAN DEVELOPMENT POLICIES /

The EU is a significant player in the development field, and development finance is currently a central piece in the EU's toolbox. In the arena of development finance, the EIB focuses on investing in projects that promote sustainable and inclusive growth in support of the EU's external policy objectives. The EIB operations outside of Europe are based on the general principles guiding EU external action as set forth in Article 21 of the Treaty on EU (TEU), such as supporting democracy and the rule of law, human rights and fundamental freedoms.

The European institutions have tasked the EIB with implementing various mandates for loans and financial instruments to complement European development aid.

The most important mandate guiding EIB operations is the **External Lending Mandate (ELM)**, which has been in place since 1976. Under this mandate, EIB operations during the period from 2014 to 2020 are backed by a dedicated guarantee fund, with a ceiling of €32.3 billion². Its purpose is to provide a legal basis and a guarantee to the EIB against losses under financing operations in 68 eligible countries outside the EU.

A concrete example of how this guarantee fund is being used is quite telling: after the outbreak of the civil war in Syria, the Al-Assad regime decided not to repay loans that the EIB made to the country³. As a result, the EIB incurred financial losses that are compensated on a yearly basis by EU Member States through the ELM.

In recent years, this External Lending Mandate has been a privileged tool for the EU to respond to external crises. Hence, the EIB was called to the rescue to provide more investments in the Middle East and North Africa following the Arab Spring, or more recently in Ukraine during the war with Russia.

This Mandate was beefed up following a mid-term review back in 2016, with the EIB benefitting from additional guarantees as part of the EU's response to the so-called "migration crisis". Indeed, under the **Economic Resilience Initiative**, the EIB has aimed to mobilise €15 billion in investments in the private and public sectors in the Western Balkans, the Middle East and North Africa from 2017 to 2020.

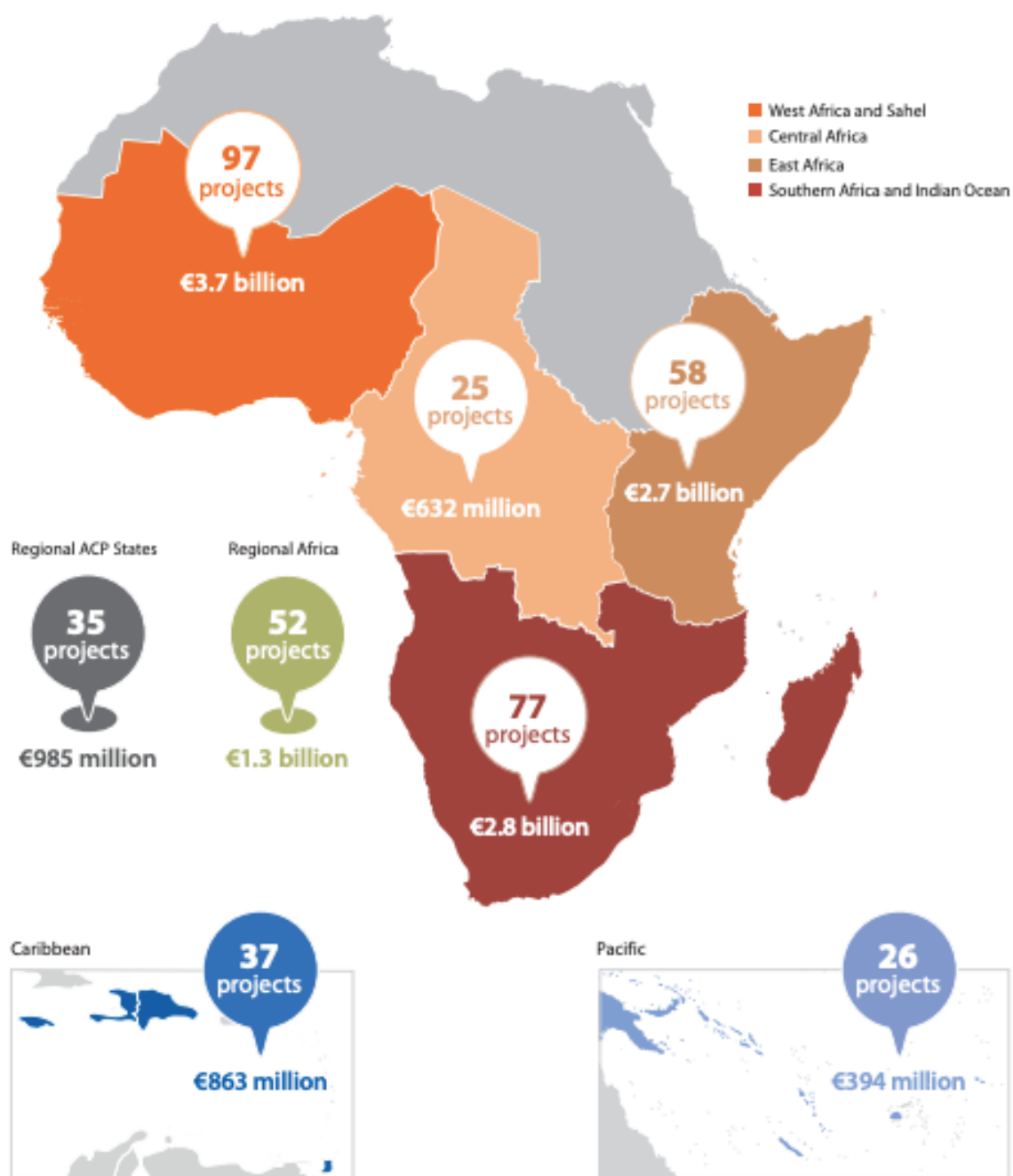
It is also important to flag that for its **operations in Sub-Saharan Africa**, the Caribbean and Pacific (the ACP countries), the EIB manages the ACP Investment Facility. This financial instrument is a revolving fund established under the Cotonou Agreement, which benefits from the financial support of the European Development Fund (EDF).

In 2019 alone, new signed operations in the ACP countries totalled €1.35 billion. Since its launch in 2003, the ACP Investment Facility has financed operations worth €7.7 billion⁴. Over the same period, investments worth €5.7 billion came from the EIB's own resources (for a total of 402 financed projects with a total investment of €13.4 billion across the ACP regions). It is worth noting that out of this combined €13.4 billion for ACP countries, €8 billion has gone to private sector projects and €5.4 billion to the public sector.

Fewer than 40% of the EIB's operations outside of Europe are not covered by any mandate and take place under the Bank's own resources – meaning that they don't benefit from any guarantees or assistance from the EU budget.

Therefore, the EIB is already an important development player, and it plans to do even more. Indeed, the EIB is now planning to become the "EU Development Bank".

REGIONAL BREAKDOWN SINCE 2003




Regional Breakdown of EIB activities in ACP between 2003 and 2019⁵



WHAT IS THE EIB GROUP?

The European Investment Bank Group (EIB Group) is the European Union's investment bank and its financial arm. It consists of the European Investment Bank and the European Investment Fund. The shareholders of the EIB are the 27 EU Member States. The Bank is the largest multilateral financial institution in the world. In 2019 alone, the EIB Group invested a total of €73.5 billion in a wide variety of projects and operations.

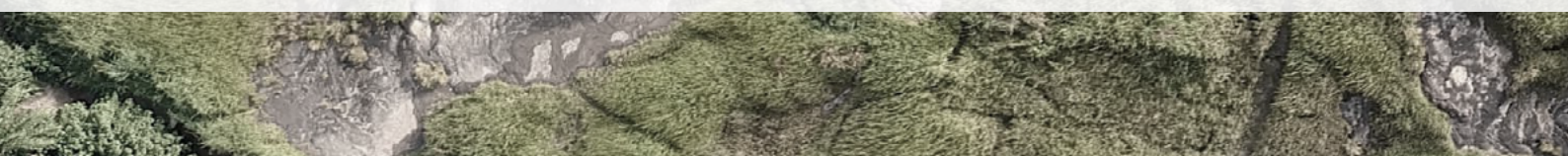


/ THE GENESIS OF THE “EU DEVELOPMENT BANK” DISCUSSION /

This plan dates back to 2017, when EIB President Werner Hoyer first mentioned the possibility of creating a subsidiary dedicated to development. In December 2017, the idea was flagged to the European governments in a Council meeting⁶, but did not gather significant support from the EU finance ministers.

Then, in June 2018, a joint French-German declaration (the *Meseberg Declaration*⁷) got the debate back on the table: in the Declaration, both governments committed “*[t]o set up swiftly a High level group of ‘wise persons’ on the European Financial architecture for development (especially regarding the respective roles of EIB and EBRD), in order to make proposals for the December European Council*”.

These words were put into action in 2019 when the Council set up the High-Level Group of Wise Persons on the European financial architecture for development (hereafter the High-Level Group⁸). Chaired by Thomas Wieser, the High-Level Group published its report in October 2019, which identified three options for the future of European development finance⁹:

- 1/** Setting up a new institution from scratch: the “EU Development Bank”
 - 2/** Building on the structure of the EIB to create the “EU Development Bank”
 - 3/** Building on the structure of the European Bank for Reconstruction and Development (EBRD) to create the “EU Development Bank”
- 



While creating a brand new institution was the option favoured by Wieser and the High-Level Group, it was quickly discarded by the European governments. The views of European finance ministers diverged significantly on whether the EIB or the EBRD should be given the leading role. As a result, the Council agreed that it would take a decision based on independent feasibility studies that will be launched after the summer 2020 and probably only finalised in 2021¹⁰.

Both the EIB and the EBRD came up with initial proposals for the Council in February 2020. In practice, this means that **this debate about the creation of an “EU Development Bank” is ongoing at the date of publication of this report. The EIB used the opportunity offered by the High-Level Group report to get back to its idea to set up a subsidiary for its operations outside of Europe – the European Bank for Sustainable Development.**

This debate is taking place in a very specific context. On the one hand, the negotiations over the future EU budget for the period 2021-2027 are ongoing. This future budget is of high importance in the EIB's eyes, because it will determine its future development mandates, and the budgetary guarantees that the Bank will receive to back up its operations outside of Europe.

The initial budget proposal from the European Commission led to acute tensions with the EIB, as it did not foresee dedicated mandates for the EIB but only a single guarantee fund under which the EIB would compete with other development banks to access EU guarantees. In a nutshell, the EIB feared it would lose its privileged status under the EU development finance architecture, along with its own pot of guarantees. The negotiations are not over as of the date of publication of this report, but it seems that the EIB has managed to get the support of European governments to strike a compromise with the European Commission, so that it still benefits from dedicated mandates and access to guarantees to back its operations outside of Europe under the future guarantee fund.

On the other hand, the COVID-19 crisis is also influencing the future set-up of EU development finance. For example, the European Commission already indicated that its new flagship development instrument under the future EU budget – the Neighbourhood, Development and International Cooperation Instrument (NDICI) – will be reshuffled in order to focus on recovery measures following the unprecedented health and economic crisis caused by the pandemic. As part of emergency measures already adopted, the EIB itself announced that it will provide up to €5.2 billion in the coming months, including through existing guarantees from the EU budget, to strengthen urgent health investment and accelerate long-standing support for private sector investment in more than 100 countries around the world¹¹.

/ WHY THE FUTURE EIB DEVELOPMENT ROLE MATTERS /

Back in 2016, CEE Bankwatch Network and Counter Balance published a damning report on EIB operations outside of Europe¹². The report analysed how the EIB delivers on its External Lending Mandate and came up with a critical conclusion: the Bank's lending outside the EU has been plagued by a range of fundamental problems, including a lack of overall development orientation, weak transparency and access to information practices, a problematic approach to tax evasion and tax dodging, and poor enforcement of sustainability standards and human rights due diligence.

This dismal track record raised a key question: is the EIB well positioned to be the cornerstone of the European development finance architecture?

Now that the EIB wants to step up its development role and create a dedicated branch labelled the “EU Development Bank”, an even more important question emerges: **is the EIB fit for the task of becoming the “EU Development Bank”?**

This report aims at updating our analysis on the EIB's track record in the development field through a comprehensive analysis. A serious assessment of how the EIB can play a stronger and better role in contributing to the well-being and equitable development of people and territories outside of Europe is necessary.

Then, it offers a series of detailed recommendations for fundamental reforms at the EIB, so that it can better support partner countries' development priorities and ultimately become a credible candidate for the “EU Development Bank” seat.

What this report does not aim to do is to take a position on who should prevail in the competition – or beauty contest – between the EIB and EBRD¹³. This report focuses on the EIB, but CEE Bankwatch Network and other partner NGOs have developed a wide set of recommendations for the EBRD over the last decade as well. We consider that, at the time being, both banks are still a long way from becoming the “EU Development Bank”, as explained in a joint NGO submission to the High-Level Group in 2019¹⁴.

CHAPTER 1 will analyse the state of play at the EIB and provide an assessment of how close it currently stands to being a development bank. This will include a review of the type of development model that the EIB supports.

CHAPTER 2 will expose a fundamental problem at the EIB – the low priority given by the Bank to the promotion of and respect for human rights in the projects it finances, as well as the violations of these rights that have been linked to several of its operations. This section also presents a proposal for raising the bar in this field and establishing an effective framework for human rights due diligence at the EIB.

CHAPTER 3 will assess how the EIB ensures that social and environmental safeguards are respected in the projects it finances.

CHAPTER 4 will highlight key steps forward for the EIB, with a detailed list of recommendations for the Bank itself, but also for its shareholders and other EU institutions to ensure that the EU development financial architecture serves development objectives.

In all chapters, several case studies of EIB-financed projects in eastern Africa, the Caucasus, the Balkans and Asia illustrate our findings with tangible evidence, together with an analysis of the Economic Resilience Initiative of the EIB.



THE EIB'S PROPOSAL TO BECOME THE “EU DEVELOPMENT BANK”

Early in 2020, the EIB sent concrete proposals to the Council on the Bank's plans to step up its development operations.¹⁵ Below are highlighted the key steps formulated by the Bank

PHASE 1

IMMEDIATE NEXT STEPS

These short-term measures include, inter alia, better coordination and cooperation with EU institutions – in particular the European Commission and the European External Action Service – and other development banks, and a stronger alignment with EU priorities. They can be implemented without additional resources from the EU budget or EIB shareholders.

PHASE 2

IMPROVE BUSINESS MODEL

This means, in practice, deepening the impact of EIB operations while keeping a constant volume of operations by increasing presence on the ground and hiring around 100 additional staff dedicated to investments outside of Europe. This option would entail a more decentralised business model with an increased role of four regional hubs based in the existing offices of the EIB.

PHASE 3

SCALE UP

The EIB would increase its volume of operations and hire around 270 additional staff. But this would require an increase of the EIB capital – the indicative amount suggested by the EIB is around €4.4 billion, which would allow it to mobilise a total of around €150 billion in Africa over 7 years, compared to the €100 billion currently foreseen. Under this scenario, the EIB also wants to access additional grants, meaning more support from the EU budget to back up its operations.

For the EIB to implement these three phases – especially Phase 3 – a new governance structure needs to be adopted. There are two main options on the table:

1/ Set up a development branch within the EIB

2/ Create an independent subsidiary within the EIB Group

It is worth noting that the option to create an independent subsidiary within the EIB does not come out of the blue. The EIB Group already includes such a subsidiary: the European Investment Fund (EIF), whose main focus is to support small and medium enterprises (SMEs) and midcaps around Europe via a variety of financial instruments and investment funds.

Key pending question: *Who would be the shareholders of the new subsidiary, and what would be its governance structure?*

The High-Level Group recommended that the EIB be only a minority shareholder in this new structure, but it is likely that the EIB would want to play a stronger role and be in the driving seat of this subsidiary. Tough negotiations would take place between potential shareholders (the European Commission, EU Member States, national development banks and potentially recipient countries) to determine how much each shareholder would exert control on the new governance structure.



CHAPTER 1

The state of play: **the EIB is far from being a development bank**

Given the EIB's future aspirations, a fundamental question to ask about the EIB is: is it currently a development bank?

In the past, the Bank's stance on the matter has varied from *"we are a key development actor"* or *"we are the 'EU Development Bank'"*¹⁶ when presenting the outcomes of its operations outside of Europe to *"we are primarily an investment bank contributing indirectly to development objectives"* when pushed to pay more attention to the development impacts of its operations.

Intrinsic to the nature of the EIB stands a contradiction. The Bank is indeed an investment bank. According to its statutes, it has been created to *"further EU policies"* via sound investments primarily targeted within Europe. But when mandated to support EU development policies, it acts – or has to act – *de facto* as a development bank. In addition, it is worth noting that EIB operations outside of Europe account for almost 30% of EU institutions' Official Development Assistance (ODA).

This chapter will explore the reality of the EIB's track record outside Europe and its overall development orientation. This analysis starts from the fact that, whether it likes it or not, the Bank is mandated to act as a development bank outside Europe, in support of EU development policies.

ONE / A LACK OF “DEVELOPMENT ORIENTATION” AT THE EIB /

Before digging further into the specific impacts of EIB operations, it is important to look at the broader picture. In this regard, it is apparent that the EIB lacks a clear development orientation, an opinion that is shared by many, including the European Commission.

In September 2019, the **European Commission** published an evaluation of the EIB’s development operations under its External Lending Mandate during the period from 2014 to 2018¹⁷. Despite the overall positive assessment of the soundness of EIB operations, for the first time clear critical lines emerged in the public domain on the need to better align the Bank’s activities with EU development policy objectives. Indeed, the Commission’s findings confirmed our previous assessments and repeated calls for improvements in the fields of transparency, human rights due diligence and development impacts of EIB projects.

Under the procedure set forth in Article 19 of the EIB Statute, the Commission issues an opinion on every project in the EIB pipeline, based on a short note produced by the EIB services. A negative opinion from the Commission is tantamount to a veto for the Bank. A positive opinion means that the project can move ahead and be submitted to the EIB Directors for their approval. But the Commission’s evaluation of the effectiveness of this procedure demonstrates its current limits: it found that the level of information shared by the EIB under the Article 19 procedure is often insufficient and should be enhanced. Hence, the Commission’s efforts to ensure the coherence of the EIB’s activities with EU policies face limitations due to the lack of available information. In addition, the Commission notes that its monitoring and evaluation on EIB projects is also delicate, as *“it is difficult for Commission services to gain insight into their performance other than via external stakeholders, given that reporting on actual results is provided only after project completion and there is no obligation for the EIB to signal implementation problems.”* The blunt conclusion drawn by the Commission is that the *“actual results and impacts of the EU intervention remain largely unknown”*.

A month later, in October 2019, another critical assessment of the EIB development role was formulated: Thomas Wieser, Chair of the aforementioned High-Level Group of Wise Persons on the European financial architecture for development stated in the Financial Times that the EIB *“lacks the necessary knowledge on development projects.”*¹⁸ His statement echoed the critical findings of the High-Level Group’s report¹⁹. Indeed, the report underlined concerns in several areas:

>> The governance of the EIB: *“The Composition of its Board of Governors, representing exclusively finance ministries, is not development-oriented and there have been no significant efforts to apply a more development-oriented approach to EIB operations outside the EU, possibly because they still represent only a small share (around 10%) of the overall portfolio”*.

>> Limited staffing and focus on development impacts: *“The EIB is not currently well equipped to take fully into account the development impacts of its lending operations, especially in sub-Saharan Africa, partly because it has limited staff on the ground outside the EU. It often does not link specific lending to overall policy priorities at the local level. In terms of project assessment, it performs comprehensive technical analysis at the project level but has limited overall development focus on impacts at the macro or systemic levels”*.

>> Little experience working with low income countries and countries with fragilities, like in the Sub-Saharan region. This concern may inaccurately assess the EIB’s experience, however: the Bank is actually active in the Sub-Saharan region, and in the context of fragile and post-conflicts countries. In its Activity Report from 2019, the EIB flags that it is active in 43 fragile states. Over the last 10 years, those 43 countries – among the world’s least developed – have received over €5.5 billion from more than 100 EIB operations²⁰. Still, looking at the EIB’s operations outside of Europe, a majority of its lending targets middle-income countries and the most stable economies in Africa.

>> Structural risk aversion at the EIB. This critique of the EIB is not new, as for a decade many academics and decision-makers have denounced the Bank’s “obsession” with preserving its AAA credit rating and its lack of risk appetite. This was one of the reasons behind the creation of the Juncker Plan within Europe: pushing the EIB to take more risks via tapping into guarantees from the EU budget to back its operations.

The pros and cons of building the “EU Development Bank” within the EIB are well described:

“THE EIB AND THE EBRD WERE FOUNDED AS 20TH CENTURY INSTITUTIONS FOCUSING ON THE ISSUES OF INVESTMENT AND TRANSITION RESPECTIVELY. THE CHALLENGES OF THE 21ST CENTURY ABSOLUTELY REQUIRE REFORMS OF THESE INSTITUTIONS.”

“IT WOULD REQUIRE CONSIDERABLE REWIRING OF BUSINESS AND MANAGERIAL PRACTICES, AND A DIFFERENT APPROACH TO RISK-TAKING. THIS WOULD BE THE QUICKEST AND TECHNICALLY SIMPLEST OPTION TO PURSUE, BUT ALSO THE OPTION WITH THE HIGHEST RISK OF INEFFECTIVENESS AND UNCERTAINTY AS TO THE DEVELOPMENT IMPACT.”

The EIB reacted strongly to the critical views expressed in the High-Level Group’s report, with President Hoyer stating in an interview with Devex that it is “*total nonsense*” to say that the EIB has no development expertise and “*an attack on the professionalism and integrity of some of our people who definitely have the development DNA in their genes, and I think we should stress that more*”²¹.

The conclusions of the report still raise very important issues. Indeed, the EIB has little staff presence on the ground, despite the creation of local offices and some EU delegations in third countries hosting EIB staff. The business model of the Bank is a “lean” one: few staff moving around large financial flows. Notably, the EIB Group employs less than 4,000 staff – the majority of whom focus on activities within the EU – in comparison with the 10,000 employees of the World Bank. As we will explore in the further sections of this report, this creates real problems for the *ex ante* assessment of development impacts of projects, due diligence and monitoring (for instance, around human rights).

In addition, there is little ownership of recipient countries in the Bank’s decision-making process, as the EIB governance structure is centred around its shareholders (the EU Member States) and European institutions (via the representatives of the European Commission and European External Action Service in its Board of Directors, for example). This is linked to the primary purpose of the EIB – investments within Europe – and to its nature as a *sui generis* body of the European Union enshrined under the EU treaties.



RECENT IMPROVEMENTS AT THE EIB

Since our 2016 report *Going Abroad*, a few noticeable developments have taken place at the EIB. First, the EIB took a landmark decision in 2019 to stop support for fossil fuels by the end of 2021. This decision will apply to all EIB investments outside of Europe. Then, the EIB made some major climate commitments in November 2019, promising to:

UNLOCK €1 TRILLION IN CLIMATE AND ENVIRONMENTAL INVESTMENTS BY 2030;

ALLOCATE AT LEAST 50% OF EIB FINANCE TO CLIMATE AND ENVIRONMENTAL SUSTAINABILITY BY 2025;

BY THE END OF 2020, ALIGN ALL ITS FINANCING ACTIVITIES WITH THE GOALS OF THE PARIS AGREEMENT.

In this context, the EIB aims to adopt a Climate Bank Roadmap for the period 2021-2025 to transform itself into the “EU Climate Bank” by the end of 2020.

Finally, the EIB has tried to address the major flaws in its fight against tax evasion and tax avoidance, which Counter Balance has exposed in previous reports. The Bank adopted a new tax policy in March 2019 that significantly improves upon its previous one²². In particular, it incorporates measures to counter tax avoidance via tax integrity due diligence checks and an anti-tax avoidance toolbox. The EIB will not be able to invest in countries featured on the EU black list of prohibited jurisdictions, and non-compliant jurisdictions will receive “enhanced vigilance”.

Still, it remains to be further examined how the new tax policy will be implemented, also given some of its limits. For example, the policy creates a category for “restricted jurisdictions”, which would likely encompass at least the countries on the EU grey list. It is disappointing to see that while clients located in those jurisdictions cannot be financed (unless there is the physical implementation clause), the door remains open for the EIB to finance clients controlled or owned by entities from these jurisdictions, under specific conditions. Finally, the EIB did not make it compulsory for its clients to publish country-by-country reporting as a pre-condition to access its financing²³, and at this stage there is no public reporting foreseen on how the EIB implements its tax policy and on taxes generated by EIB-supported projects.

tWO / A QUESTIONABLE MODEL UNDERPINNING THE EIB “DEVELOPMENT” ROLE /

Another question relates to the **type of development model supported by the EIB**. Like its shareholders and the EU itself, the EIB is fully committed to reaching the Sustainable Development Goals (SDGs) and has taken commitments to contribute to poverty eradication and sustainable development. But buzzwords and trendy concepts aside, the rationale behind its intervention looks rather problematic, as it is merely based on the pursuit of growth and jobs based on the promise that these will ultimately lead to poverty reduction²⁴.

There are increasing criticisms formulated around this supposed link between growth and poverty elimination. For example, in July 2020 the UN Special rapporteur on poverty and human rights Philip Alston published a damning report about the mainstream development model pursued by most development actors claiming that *“in too many cases, the promised benefits of growth either don’t materialize or aren’t shared. Countries that experience resource booms often don’t see benefits outside that sector. Natural resource extraction employs relatively few people and can actually decrease the poverty reducing impact of other sectors. Commercial agriculture, mining, and other land-intensive industries have contributed to significant displacement of communities around the world, separating people from land they depend on for food, shelter and livelihoods, and resulting in impoverishment”*²⁵.

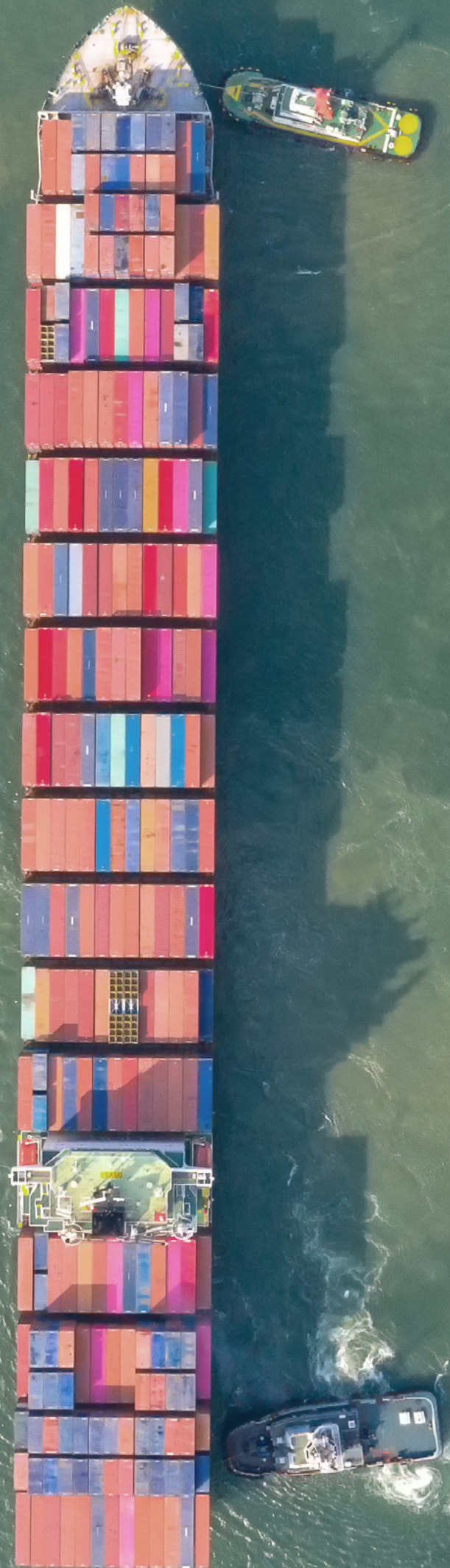
The following sections will explore how the EIB, through its operations outside of Europe, contributes to an outdated and problematic development model which ultimately exacerbates inequalities rather than alleviates them.

- AN EXTRACTIVIST MODEL PUSHED THROUGH INFRASTRUCTURE MEGA-CORRIDORS

In recent years Counter Balance has explored the new wave of large-scale infrastructure projects financed all over the world in an attempt to understand the main drivers behind the “global infrastructure agenda”²⁶. Multilateral Development Banks (MDBs) like the EIB are a key driving force behind this trend. Indeed, the EIB has strongly supported the expansion of ports, roads for exporting raw materials, airports, special economic zones and logistic centres²⁷.

A consensus has emerged among governments and financiers on a “global infrastructure agenda” largely based on the assumption that there is a huge “infrastructure gap” to be filled²⁸. For example, the Organisation for Economic Co-operation and Development (OECD) estimates that an additional \$70 trillion in infrastructure will be needed by 2030. In the hopes of governments and in particular those of the G20, infrastructure is to become a new “asset class”, attracting private liquidity and lessening the financial burden on constrained public coffers²⁹. The main characteristics of this agenda are the following:

- >> Infrastructure projects have to be mega-sized to attract large amounts of capital for a long time.
- >> Infrastructure needs to be turned into an asset class so that investors can look at infrastructure as pure revenue streams, not as hospitals, schools, bridges or power plants. An *ad hoc* financial environment has to be built in order to manage and trade the new financial assets. This should be done, for instance; by dismantling restrictions on investments for pension and insurance funds, increasing derivative-based financial products, and developing debt markets.
- >> A new wave of public-private partnerships (PPPs) and privatisations needs to happen, and it should support infrastructure in sectors including health and education.



The promoters of this agenda increasingly seek support from development banks and public finance to develop. Indeed, public funds are necessary for infrastructure projects to see daylight, but also to de-risk the participation of private actors. However, there is a real threat that public finance is actually captured by this agenda, to the detriment of meeting the needs and rights of local communities and citizens. Public money may end up guaranteeing the profits of private investors from revenue streams associated with user fees paid by citizens.

The “global infrastructure agenda” also seeks to promote new infrastructure “mega-corridors”, in the name of development. These infrastructure corridors are not new, but the plans that are now being developed are on a scale never seen before – hence the growing use of the term “mega-corridors”. From Africa to Asia, infrastructure master plans have been drawn to create “production and distribution hubs”, “development corridors”, “special economic zones” and “interconnectors”. The most famous of the corridor plans is China’s Belt and Road Initiative (BRI), but the European Union is also promoting mega-corridors. For instance, the communication from the European Commission entitled “Connecting Europe and Asia – Building blocks for an EU Strategy”³⁰ presented in September 2018 is a clear attempt to promote a similar – or competing? – mega-corridor to link the European and Asian continents.

The gigantic scale of infrastructure proposed will profoundly transform and redesign entire territories, regions and economies, and consequently the lives of billions of people. Mega-corridors are primarily aimed at enhancing the export of raw materials and goods, as well as integrating economies in global markets. They will also streamline transportation routes globally and enhance access to a limited number of hubs where demand will be centralised. As such, they are not designed to serve the aspirations and needs of local people, for example, connecting women smallholder farmers to territorial markets³¹. In short, this agenda implies an increase in the speed of circulation in the production sphere globally and thus further encourages economic globalisation.

This model is having devastating impacts on the climate, despite efforts to place this agenda under the heading of “sustainable infrastructure”³². Mega-corridors all over the world are furthermore based on high-carbon transport (airports, motorways) and energy infrastructure (including fossil fuels). As a result, this infrastructure agenda simply does not fit with the EIB’s recent commitments to align with the objectives of the Paris Agreement, nor is it compatible with the European Green Deal. Large dams, power grids, transport projects, water and waste management provision or energy extraction/generation projects tend to come with significant environmental and human rights abuses.

The top-down mega-project model that has prevailed for decades has usually proven to be ineffective in serving the needs of people and their communities, or of society in general, as affected communities and civil society groups monitoring infrastructure finance have long pointed out. Public banks like the EIB should aim to support infrastructure that prioritises social and environmental justice, instead of scaling up efforts to financialise infrastructure projects that are disconnected from the needs of citizens and territories and prove harmful for the poorest and most marginalised communities. An agenda increasing poverty and extraction of both financial and natural resources, to the benefit of a few, should not be endorsed by any development bank.

These planned corridors augur increased environmental and social injustice as more minerals are extracted, forests cut down, farmland grabbed and communities evicted to enable logistics supply chains to function (PHOTO: Bigstock/MAGNIFIER)

- A BLIND OVERRELIANCE ON THE PRIVATE SECTOR IN FAVOUR OF EU ECONOMIC INTERESTS

In the development field, the EIB is mainly known for its “traditional” operations supporting the public sector in developing countries via large-scale public infrastructure projects. Nevertheless, the reality of EIB investments outside of Europe is quite different: challenged by the High-Level Group’s report for its limited track record in private sector mobilisation, the EIB’s president stated that *“even in the toughest, least-developed countries, we are 50-50 between public and private sector”*. There is also quite a thin and blurry line between what is considered a public or a private project in development finance, given the growing overlap of the public and private spheres, especially when it comes to infrastructure projects.

Over the last decade, the EIB has been following a growing trend in the EU development agenda and at the core of the EU development policy: triggering private investments through the leverage of scarce public resources. Part of the EIB’s development mandate is based on the alleged need to support the private sector to deliver growth and jobs in Africa and the European neighbourhood regions.

It is worth mentioning that in the context of the COVID-19 pandemic, in developing countries the push for de-risking private finance and relying even more on the private sector is likely to accelerate due to the reduced fiscal space for many governments. As the economist Daniela Gabor puts it, *“rising public debt across poor and emerging countries threatens to entrench the hegemony of the Wall Street Consensus, with its elusive promise that the state can deliver, via PPPs, on grandiose infrastructure projects to restart the economies post-pandemic while tightening the belt.”*³³ Through its emphasis on private sector involvement, the EIB aims to promote the objectives pushed for years by the European Commission, for example in its Communication “A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries”³⁴. In an interview with POLITICO at the World Economic Forum in Davos in 2017, the EIB’s President Hoyer made it clear that *“[w]hat is needed is not global social policy but down-to-earth investment. [Africa] has fantastic potential, but we need to mobilize the private sector. The idea of doing everything with grants is over”*³⁵.

This approach raises a serious concern: the focus on the private sector may be more centred around economic diplomacy³⁶ and business than poverty eradication and inequalities reduction. The risk is that the EIB ends up subsidising business – especially Western companies and multinationals – to make profits in the poorest regions of the world under its development operations, which are backed by a budget derived from taxpayers’ money.

For example, a recent report by the Spanish NGO Observatory of Multinationals in Latin America (OMAL)³⁷ examined EIB operations in Latin America and found that, out of the €6.7 billion spent in the region in the period from 2006 to 2019, 36% ended up supporting projects involving Spanish transnational firms and their local subsidiaries, in places such as Brazil, Ecuador and Panama.



EUROPEAN INVESTMENT BANK

36% of all loans** from the EIB to Latin America in 2006-18 were for 5 companies:



OMAL report "Public Funds, Private Business"

This shows the reality of the risks of prioritising European companies over local companies (especially SMEs) and as a result further marginalising them. While developing countries need to diversify their economies and industrialise, mostly for local and regional markets, this type of investment supports opportunities for national branches of European firms instead and stands at odds with the principles of development effectiveness.³⁸

Looking at the big picture, the EIB's operations can also be considered part of the growing "economic diplomacy" concept put forward by the European Commission and the European External Action Service (EEAS). Hence, the EIB is cooperating with these institutions and is considered an instrument to promote European enterprises, including SMEs.

THE FLAWS OF THE BILLIONS TO TRILLIONS APPROACH

The international development community has been placing a growing emphasis on the role of blended finance in bridging the financing gap to reach the SDGs in developing countries. The rationale behind blended finance is to use public development finance to trigger private investments and leverage private funds, by using public subsidies to reduce the risks for the private investor, enhance the investment's return, or a mix of both. While originally broader in meaning, the notion of "billions to trillions" has become synonymous with the mobilisation of private capital for development³⁹.

Multilateral development banks (MDBs) such as the World Bank have been central to promoting this narrative. This notion has also been taken up by the EIB⁴⁰. Several reports have, however, shown that there is a significant disconnect between the "billion to trillions" catchphrase and the operational reality of blended finance⁴¹.

Imposing such unrealistic quantitative targets is not only misleading but can be seriously damaging. There is, for instance, a risk that development aid will be diverted away from where it is most needed, such as investments in public health, education and the social protection necessary to eradicate extreme poverty and reduce inequalities. Mobilising private capital is much easier for countries that are richer and sectors that are more commercial, therefore defeating the overall objective of maximising development in the poorest countries.

These exaggerated claims also give the impression that financing gaps can be met by mobilising the private sector alone, therefore reducing the pressure for development aid to be increased or even maintained. The false promise of "billions to trillions" may also detract from other highly needed efforts and policy measures, such as increasing mobilisation of domestic tax revenues and fighting tax avoidance and tax evasion.

Alongside the "billions to trillions" slogan, the push for blended finance is also promoted through the "maximising finance for development" approach⁴². Originally introduced by the World Bank as the "cascade approach", its main objective is to promote private sector finance over public finance. There are, however, dangerous consequences to this. The promotion of such agendas is a threat to democratic control over development policy, as it increasingly shifts the decisions of what gets financed to a handful of investors.

Policy makers, taxpayers, and those affected by a project should be able to know how much was invested, what it costs (the subsidy), what additional private finance was mobilised and what its impact was. It is crucial for policy makers to understand the value of such an approach versus that taken by other types of financing, but the opacity and complex architecture around blending instruments have raised the important issues of transparency and accountability, in particular at the EU level. A recent study published in May 2020 on blended finance, commissioned by the European Parliament, provides very clear conclusions in this regard: *"Blending can create longer-term risks for development agencies and costs for recipient governments. Traditional evaluations often do not capture the full impact of such policies. Furthermore, there is an opportunity cost to using ODA in this way and blending may promote the perspective of financial investors over development outcomes"*.

As a recent paper from the United Nations Conference on Trade and Development (UNCTAD) argues⁴³, if money flows to fill the financing gap for SDGs under the form of loans only, the debt stock would surge in low income countries, which is unsustainable. Relying on private finance is also not a silver bullet, since the historical track record is that private finance has been ineffective in financing public goods and infrastructure, and has caused financial vulnerabilities. The paper calls instead for scaling up public investments, including via public development banks, rather than seeing the role for public finance as only to translate the SDGs into "bankable projects" and create a conducive investment climate for the private sector.

There is an urgent need to temper the expectations of the "billions to trillions" rhetoric and rethink the "private finance first ideology" that is being promoted through such narratives. The financialisation⁴⁴ and privatisation of development finance are unlikely to support the emancipation of developing countries and run counter to the promotion of an alternative and community driven sustainable development model.

“BILLIONS TO TRILLIONS”

A FUNDAMENTALLY FLAWED CONCEPT

To finance the Sustainable Development Goals, public money is being used more and more often to “leverage” private investments.



OBJECTIVE



FROM BILLIONS OF PUBLIC MONEY TO
TRILLIONS OF PRIVATE MONEY TO SERVE DEVELOPMENT GOALS

THIS IS WHY THIS IS ALSO CALLED “BILLIONS TO TRILLIONS” OR “BLENDED FINANCE”:
BLENDING / MIXING OF PUBLIC DEVELOPMENT MONEY TO TRIGGER PRIVATE FUNDS



BUT

1

NO PROOF IT WORKS TO PROMOTE
SUSTAINABLE AND INCLUSIVE
DEVELOPMENT AND TACKLE
INEQUALITIES

2

Risks:

- DIVERT DEVELOPMENT AID FROM WHERE IT IS MOST NEEDED: HOSPITALS. EDUCATION, SOCIAL PROTECTION
- MOBILISES PRIVATE CAPITAL IN RICHER COUNTRIES AND MORE COMMERCIAL SECTORS
>> NOT SUITED FOR POOREST COUNTRIES
- LACK OF DEMOCRATIC CONTROL: THE PRIVATE SECTOR ULTIMATELY DECIDES WHAT GETS FINANCED
- PROMOTES THE FINANCIALISATION OF OUR ECONOMIES AND PRIVATISATIONS: UNLIKELY TO SUPPORT THE EMANCIPATION OF DEVELOPING COUNTRIES

- THE USE OF FINANCIAL INTERMEDIARIES: A BLACK HOLE FOR EIB OPERATIONS



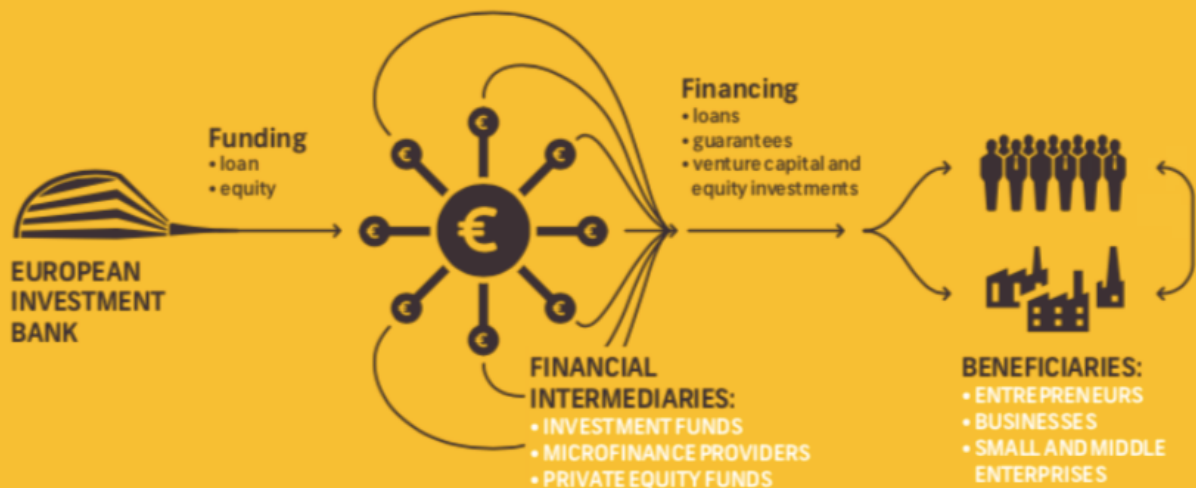
Supporting SMEs and local private sector development is one of the EIB's objectives under its External Lending Mandate. In order to reach this objective, the Bank does not necessarily lend directly to a project, but also uses what we will refer to in this report as "financial intermediaries". This type of lending at the EIB has doubled in the last 15 years, accounting currently for

approximately one-third of the Bank's total operations. In 2019, €2 billion was channeled via intermediated operations outside of the EU, accounting for around 25% of the EIB's operations. Such operations are the backbone of the EIB Economic Resilience Initiative (see page 77) as well as a privileged way for the EIB to reach out to the private and financial sectors in developing countries.

There are two principal ways for these intermediated operations to take place:

1. The EIB disburses large loans to commercial banks for these institutions to pass on (or "on-lend") in smaller loan tranches to final beneficiaries, which are mainly SMEs.
2. The EIB conducts investment operations through financial intermediaries via investment and private equity funds.

What are financial intermediaries?



The use of international intermediaries is considered by MDBs as the most efficient way of channeling resources toward SMEs in specific developing countries, as it reduces transaction costs and timescales.

Nevertheless, this practice comes with a number of challenges that may undermine the positive development impact and which, up to now, have not been addressed properly by the EIB. The huge transparency challenge around intermediated financing is further described in the section on the transparency of EIB operations in Chapter 3, but there are others worth highlighting.

INSUFFICIENT CONTROL OVER THE USE OF PUBLIC FUNDS

In its December 2019 report *“Is the EIB up to task in fighting fraud and corruption?”*, Counter Balance highlighted that, when supporting private equity funds, the Bank has no means to carry out anti-money laundering checks on investee companies⁴⁵. Once the EIB supports an equity fund, the Bank claims that it cannot refuse to contribute to a call for capital if corruption allegations emerge.

The EIB argues that investment funds it supports are subject to the surveillance of the relevant national financial regulator where the fund is established – meaning that Anti-Money Laundering / Combating the Financing of Terrorism controls should be systematically and continuously carried out by the regulated national entities, as required by law. But numerous money laundering and corruption scandals at the European and international levels involving investment funds and private banks show that there are serious shortcomings in the surveillance taking place at the national level.

The fact that the EIB performs a “know your customer” due diligence program for all new EIB clients in order to detect possible compliance or integrity concerns is supposed to complement regulation at the national level. But as recent revelations of the Luxembourg Times⁴⁶ – based on an internal audit at the EIB and additional work from the consultancy firm PWC – demonstrate, this is not always sufficient to avoid prohibited conduct and ensure sound monitoring of intermediated projects. Indeed, the audit reveals serious failings of the Bank on the anti-money laundering front, especially as far as support to investment funds is concerned⁴⁷.

This confirms the fact that financial operations going through commercial banks bear serious risks for the EIB. Back in January 2018, an evaluation from the EIB focusing on its operations via financial intermediaries in the ACP regions under its Investment Facility raised serious concerns about the lack of control, monitoring and reporting on intermediated operations⁴⁸:

“In ACP, where there is no obligation to transfer the interest rate advantage, it is very difficult to trace EIB funding to specific final beneficiaries, let alone projects.”⁴⁹

“Moreover, as money is fungible and allocation lists are found to be interchangeable, ensuring the compliance with Environmental & Social safeguards at the allocation level is no guarantee against reputational risk. The intermediary could be engaging for the most part in funding projects that do not meet the EIB’s E&S standards or are in non-eligible sectors, while submitting the sample of its funding for eligible projects to the EIB. It would be difficult to imagine that the EIB’s reputation would remain unblemished if it emerged that one of the financial intermediaries it financed was involved in such activities.”

“The coverage and quality of ex-post reporting on allocations, through the mandatory annual allocation reports, was found to be very weak.”

These findings contradict one of the arguments often used by the Bank, that the EIB’s participation in these funds leads to a significant improvement of their practices and E&S standards. This also casts serious doubt on how much control the EIB really has over the intermediary institution, and if any solid mechanisms are in place to avoid its funds being misused.

A similar paradox has emerged in the case of the Vinca waste incinerator project in Belgrade⁵⁰. In October 2019 the EIB confirmed that it had decided not to go ahead with financing for a municipal waste incinerator in Belgrade, 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. While the EIB’s decision was welcomed by civil society organisations opposing the project, it turned out that the EIB-financed Marguerite II Fund has remained a shareholder in the project company even since the EIB pulled out.



Protest in Belgrade against the planned waste incinerator project (Photo: CEE Bankwatch)

When approached by local group Ne Davimo Beograd in early 2020, the EIB distanced itself from the Fund's decision-making: *"The Bank is not represented at the Fund's Investment Committee and it is not involved in the Fund's decision-making on individual investments."* It did, however, commit to raise the issues with the Fund manager.

The EIB later confirmed that *"the Marguerite II Fund is required to ensure that investments comply with the EIB requirements, including on environmental and social matters, through the legal documentation, which i.a. includes the obligation to comply with national laws and with EU legislation, as applicable. As previously indicated, the Fund is fully responsible and accountable for its investment decisions and for ensuring compliance with the legal framework in which it operates. As part of this, the Fund Management has an obligation to inform shareholders of breaches thereof, and implement remedial plans to resolve any outstanding issues."*

However, to date, the Marguerite II Fund remains a shareholder of the project company⁵¹.

By outsourcing part of its lending, the EIB outsources part of its responsibilities as well. Increasing reliance on third parties for the carrying out of due diligence is a dangerous trend which can seriously undermine the quality and the potential positive outcome of the lending. The EIB should at all times remain responsible and provide more clarity on how these procedures are carried out in order to improve transparency and avoid the misuse of funds.

Another problem relates to the nature of the financial intermediaries with whom the EIB works. They are often western or large regional commercial banks with little or no interest in pro-poor development and tackling inequalities, and often operate from tax havens, for instance Mauritius. Since these intermediaries swallow part of the loan-related benefits, the EIB is actively strengthening a type of financial sector which is not always adapted to the needs of local economies.

PRIVATE EQUITY FUNDS: THE DARK SIDE OF EIB OPERATIONS

The use of private equity funds is particularly concerning. **Given their focus on high returns and profit maximisation, which clearly contradicts a “pro-poor” approach, the public support for these funds furthers financial extraction at the expense of domestic resource mobilisation**, even though the profit motive is supposed to be constrained through environmental, social and good governance safeguard policies.

Private equity funds have come under increased scrutiny in the last decade for the labour, social and development impacts associated with their speculative business model. Private equity is often described as “asset stripping”, whereby the productive parts of a company are sacrificed in favour of the selling off assets and the forcing up of share prices to allow profit for short-term investors⁵². Profits are also made by shedding labour, or buying cheap companies after their privatisation and selling them off at a higher price. Trade unions have warned against massive lay-offs consequent to takeovers and the restructuring of companies carried out by these financial actors⁵³. International institutions, such as UNCTAD, have raised concerns about the negative long-term development impacts associated with this kind of foreign direct investment, which remains highly non-transparent⁵⁴.

The fact that these intermediaries are often located in tax havens and secrecy jurisdictions⁵⁵, in addition to their unproven economic impact in developed countries, generates serious concerns over the interest of the EIB in backing such speculative funds, which typically seek rates of returns of more than 20% in the name of development⁵⁶.

On the corruption front, the outsourcing of due diligence is a particularly concerning issue. The case study below is dedicated to the Bank’s support for the private equity fund Emerging Capital Partners (ECP). It is also worth noting the EIB’s support to the Abraaj Group (through a €20 million equity investment in the fund⁵⁷), given the major corruption scandal that hit this prominent fund in 2019⁵⁸. Abraaj was active in the Middle East and received financing from numerous development banks. In its reply to our draft report, the Bank noted that “[the] EIB had exposure to seven funds managed by entities controlled by Abraaj Holding Limited when the first allegations of potential misuse of money were made at the beginning of 2018. In July 2018 the EIB opened an investigation, however no evidence was obtained that the misuse of money has impacted any funds in which EIB has invested. EIB is monitoring the outcome of the judicial proceedings in [the] USA and UK in relation to Abraaj Group executives”. But even if the EIB’s investment may not be directly impacted, this story sheds light on the type of equity funds that can become EIB clients⁵⁹.

IS THE EIB BACKING DUBIOUS PRACTICES IN EASTERN AFRICA?

The use of financial intermediaries such as private equity funds by the EIB is putting development finance at risk of mismanagement, corruption, fraud or other abuses. A case in point is that of Emerging Capital Partners’ (ECP) Africa Fund II⁶⁰, a pan-African Private Equity firm financed by the EIB, which has recently come under scrutiny on the BBC documentary programme *Africa Eye*. The investigation by *Africa Eye* shed light on allegations of fraud, bribery and other highly questionable business practices by two ECP-appointed British managers⁶¹.

The two British managers were appointed by ECP Africa to run its investee Kenyan firm Spencon, one of East Africa’s largest home-grown infrastructure development companies. Over its 40 years, Spencon executed over 200 infrastructure projects across eight African countries. The managers were sent to save the company, which was struggling at the time. Instead of helping save it, the two managers led it to its demise.

Based on interviews with former staff and thousands of leaked Spencon emails, messages and documents, *African Eye* reported on highly worrying allegations. The investigation revealed that the two appointed managers made illegal cash payments to Kenyan government officials and hired a convicted criminal as security consultant. The security consultant sold company assets at an undervalued price and, with the managers’ apparent knowledge, and paid the proceeds into his personal account. Both managers denied any wrongdoing and said the money was deposited into the account to protect it from creditors who had “dubious” court orders to seize it, and to allow Spencon to “disburse the funds as it chose”.

The two managers also used company funds and equipment to build a golf practice area for their own use, justifying it with the claim that this would help give the impression of a thriving company. Nancy Ntinu, who joined Spencon as its HR manager in 2016, strongly questioned this investment, stating that *“it was a mockery for Kenyan employees to watch this lawn being watered on a daily basis because these two gentlemen wanted to play golf.”* What’s more, the managers failed to pay Kenyan staff during the final months of the company, despite them continuing to draw their own salaries, each earning over \$20,000 a month.



Although the EIB staff initiated an investigation, the bank has remained silent as to the outcome and no action was taken to save the company (Photo: Earth Works)

From 2015 on, whistleblowers informed the EIB of many of the allegations reported later by Africa Eye. Despite this, the EIB took no action to save the company, which went bust at the end of 2016. There are serious concerns that the EIB’s ability to safeguard funds has been fatally compromised by the contracts that the EIB has entered into with the fund managers. Ultimately, in June 2020 the EIB **closed its internal investigation without identifying** *“sufficient elements corroborating the allegations against ECP”*. The case was also referred to the European Anti Fraud Office (OLAF), which dismissed the case in 2017 and did not proceed to open an investigation.

The two appointed managers are now employed in senior positions in UK firms. Many Spencon staff, however, have not been so lucky. None of the workers have received their missing pay, and many of them are now living in penury. Far from being used to reduce poverty, the poorly controlled EIB funds have in effect promoted it.

The allegations reported by *Africa Eye* should not be treated in isolation. How many other investments are similarly dogged by management and other problems that the EIB is powerless to address because of the contracts it has signed? Can the public be reassured when it is the funds that self report on their compliance with such social and environmental safeguard policies? Would direct investments, administered by the EIB itself, be more accountable to the public?

The fact that the EIB claims it cannot refuse to contribute to a call for capital in cases where companies invested in through private equity funds are accused of bribery, fraud or mismanagement is highly problematic. If it is indeed not feasible for a public institution to stop disbursements when corruption allegations emerge, then public money should simply not be channeled through such investment funds.

CONTRIBUTING TO THE COMMERCIALISATION OF EDUCATION

Serious concerns have been raised in recent years about the corporate practices and impact of Bridge International Academies (BIA), a commercial school company based in Delaware (a US-based tax haven). The EIB has invested in this company via the private equity fund Novastar – based in Mauritius – alongside the International Finance Corporation (part of the World Bank Group). BIA is a large-scale network of private pre-primary and primary schools claiming to deliver “quality affordable education to underserved families and children”⁶². It operates more than 500 schools with over 100,000 pupils in Kenya, Uganda, Nigeria, Liberia and India.

In March 2018, a group of 89 civil society organisations sent a letter to the EIB president calling attention to a large body of evidence from various independent sources, including journalists, governments, former BIA staff, independent experts and civil society, that raised alarms about BIA⁶³. These included concerns about the quality of education, lack of transparency, poor labour conditions, high fees and lack of respect for the rule of law in host countries. To date, the unconvincing reply by the EIB has not led the Bank to reconsider its support to the Novastar fund and ultimately BIA⁶⁴.

While many donors and investors in BIA are attracted by the idea that the company is claiming to help relatively poor children to access school, a number of studies have found that BIA schools are inaccessible to the very poor and marginalised groups, including those with special educational needs. Fees are often out of reach for the poorest and have been reported to be significantly higher than what BIA claims.

In February 2017, a Kenyan court ordered the closure of Bridge schools in Western Kenya for failing to meet minimum education standards⁶⁵. A number of other court cases followed in the country, including cases ordering the closure of Bridge schools for failing to meet health and safety standards⁶⁶. Similarly, in February 2018, the Ugandan Ministry of Education took the decision to close all 63 Bridge schools in the country for failing to meet minimum educational as well as health and safety standards⁶⁷. When Bridge attempted to challenge this decision in court, the High Court of Uganda found that Bridge was “operating its academies in contravention of the law” and upheld the Ministry’s decision to close the schools.

BIA is also involved in a public-private partnership with the Ministry of Education in Liberia. There, the Coalition for Transparency and Accountability in Education (COTAE)⁶⁸ and others, including an official evaluation of the programme commissioned by the Ministry of Education, identified concerns that children were turned away when BIA took over the management of local schools and imposed class size restrictions. Other concerns included excessive costs and poor value for money (with the PPP contract ending up costing 13 to 21 times more than government schools), a lack of transparency and accountability, and limited accessibility for the most vulnerable and disadvantaged communities⁶⁹.

Among these allegations were also underlying concerns regarding the privatisation and commercialisation of education, which threaten the role of education as a fundamental human right for the public good. Following these concerns, the above-mentioned NGO letter called on the EIB to exit the investments it had made in BIA via a private equity fund, asking the Bank to instead expand its public sector investments in education in the countries where Bridge operates to help them achieve universal, free, high-quality public education accessible to all.

These concerns were also raised with the International Finance Corporation (IFC), the World Bank’s private-sector arm, which also funds Bridge. This led to an investigation, still ongoing, from the Compliance Advisor Ombudsman, the IFC accountability mechanism, which raised preliminary “substantial concerns” over the BIA investments. In February 2019, the Abidjan Principles on the right to education were adopted by a group of renowned experts, providing an overview of existing binding human rights law and making clear that donors also have the obligation to uphold such rights. The IFC finally took the landmark decision to freeze any direct investments in for-profit education in March 2020, illustrating the growing consensus over the negative impacts of the commercialisation of education⁷⁰. This decision also follows a 2018 resolution made by the European Parliament⁷¹ and a 2019 decision by the Global Partnership for Education, the biggest multilateral fund for education, against the use of aid money to fund profit-driven education. It is now time for the EIB to follow suit and live by its principles and obligations.

RECOMMENDATIONS

/ 1

Develop expertise on development issues at the EIB, and reinforce local presence on the ground. The current business model of the EIB – lean management, a top-down approach – is not functional in a development context.

/ 2

Put positive social and environmental development impacts at the core of projects' assessment through tailored indicators measuring the reduction of inequalities; tax revenue generation for host countries; and impacts on gender, as well as fragile and marginalised communities.

/ 3

Stop supporting projects with little development additionality and clients favouring profit maximisation, such as private equity funds. Development outcomes should take precedence over profitability: the financial sustainability of the EIB should not undermine its ability to invest in higher risk areas, or focus on projects where development returns are high but profitability may be low.

/ 4

Cease the problematic financing of PPPs. The experience of PPPs in Europe has been controversial, and EU development finance institutions should review their approach to PPPs. The EIB's role goes beyond ensuring financial profitability for the banks and project promoters, and public interest should prevail in all its operations. Therefore, the EIB should not promote a failed development model outside of Europe, especially when it comes to investments leading to the commercialisation and privatisation of health and education, or water and sanitation.

/ 5

The EIB should not be used primarily as a vehicle for the EU's economic diplomacy and the promotion of EU business interests, but rather to promote an equitable model of development that respects and promotes human rights, civic participation, and contributes to peaceful and wealthy societies.

/ 6

It is crucial that the EIB refuses to further promote projects that are key components of mega-corridors as they are instrumental to an outdated economic model which has no place in this century of climate emergency.

/ 7

Recent moves to push the EIB to be more active in the defense and security fields, as well as into migration management and border control are not in line with the EIB's primary missions and should not be part of the mandate of a socially and environmentally responsible lender.

/ 8

Go further on fighting tax evasion and tax avoidance: the EIB should pro-actively publish the beneficial ownership (BO) of all its clients, make the public disclosure of country-by-country reporting a binding requirement for its clients, and report annually on the implementation of its new tax policy and the tax revenues generated through its projects.

/ 9

The EIB should mirror the G20 commitment to suspend the debt of 77 countries following the debt crisis linked to the COVID-19 outbreak. Given that EIB shareholders are all committed to this initiative, the Bank should at least apply to its pending loans a temporary suspension, and should carefully assess the debt impact of its future operations, pending full cancellation of multilateral debt payments to the end of 2021, with an extension for countries still struggling to recover in 2022. In addition, the EIB should express public support to the rapid institution of an impartial, independent debt restructuring mechanism to minimise the negative impact of debt burdens on health and other essential public services.



CHAPTER 2

The EIB's empty promises on human rights

It may seem logical to every European citizen that European public money should not support projects that violate human rights. The Charter of Fundamental Rights of the European Union⁷² provides a strong foundation for this. The promotion of human rights, democracy, the rule of law and good governance is thus one of the basic pillars of EU external policy. The European Union and its bodies commit to promote all human rights, in all areas of its external action without exception, in line with the EU Strategic Framework⁷³ and Action Plans on Human Rights Democracy⁷⁴. In its 2014 conclusions on a rights-based approach to development cooperation, the EU Council noted that *“the implementation of a rights-based approach to development cooperation ... requires a context-specific assessment of the human rights situation, examining the capacity gaps of both duty bearers to respect, protect and fulfil human rights and of rights-holders to know, exercise and claim their rights, with a view to identifying the root causes of poverty and social exclusion”*⁷⁵.

Naturally, the EIB, in line with its Statement of Environmental and Social Principles and Standards, declares *“[it] will not finance projects which result in a violation of human rights”*. It is a strong recognition of its own responsibility, although it raises the question of how the Bank can identify potential abuses while evaluating project proposals and thus take all necessary steps and measures to prevent them. The Bank also commits to follow a human rights-based approach – which is described as mainstreaming the principles of human rights law into the EIB's practices – when considering the social impacts of its projects. In 2011, the EIB announced a review of its project social performance standards to align with the United Nations Guiding Principles on Business and Human Rights (UNGPs)⁷⁶, and claims that human rights considerations are now fully integrated in its Environmental and Social Handbook, as revised in 2013⁷⁷.

Therefore, it may come as a surprise that this European value of “*putting human rights first*” is not always borne out with the necessary rigor and diligence when it comes to the EIB’s lending outside Europe.

In Madagascar for instance, the Ambatovy nickel-cobalt mine supported by the EIB has caused health problems for the local communities and made the lives of farmers a nightmare⁷⁸. The EIB Complaints Mechanism (CM) has received a complaint, starting with the discovery that pesticides used for malaria fogging were eliminating bees and jeopardising farms, followed by broader environmental concerns about waste dumped into the sea and pollution of local rivers with dire consequences for fauna, crops and most of all human health. The EIB’s slow reaction time and the lack of independent evaluation of the project’s impacts have been criticised by the European Ombudsman⁷⁹.

In Kenya, the EIB has been supporting geothermal installations around the picturesque Hell’s Gate National Park for decades. Maasai communities have been uprooted from their homes and traditional way of living, and their status as indigenous people was ignored until the Bank’s Complaints Mechanism (CM) reacted.⁸⁰ In 2014 residents of four villages, which were home to one thousand people, were moved to a purpose-built resettlement village called RAPland. Indeed, RAPland refers to the acronym of RAP – Resettlement Action Plan. In the place where they were resettled, the volcanic ash land, lacking grass for cattle and full of wide and precipitous gullies that appear suddenly in the rainy season, has made life more dangerous and costly. Their culture, which constitutes a basis for self-identification as indigenous peoples, is at risk.

In Georgia, the EIB approved a loan for the construction of the Nenskra dam⁸¹, which is one of the largest of Georgia’s massive plans for hydropower plants in the Upper Svaneti region. Apart from the biodiversity risks and natural disaster threats linked to the dam, the Bank failed to adequately apply its standard on indigenous people to the community of Svans impacted by the project. As a consequence, the EIB failed to ensure their right to determine their future, including the right to take part in the decision making for a project situated on their traditional lands. Ultimately, the CM stated that there was no evidence that the EIB took the adequate steps to properly apply its standard on the rights and interests of vulnerable groups.⁸²

These cases, which the authors of this report have been monitoring over the last decade, are only the tip of the iceberg. In 2019 alone, 69% of the complaints submitted to the CM on specific projects were related to projects outside the EU.

While the examples provided cannot be generalised to all projects financed by the EIB, the reality is that the risks of human rights impacts of EIB projects remain largely unknown and are often addressed only after abuses occur. The few projects outlined above – which are further described in the case studies within this report – are examples of projects that have been monitored by civil society or the media or where affected individuals were engaged, informed and empowered enough to make the scandals public. There are many other examples of EIB projects with significant risks of human rights violations due to the nature of the project and/or the context of the countries where the Bank operates. The Bank should not only seek to avoid such projects, but also be equipped with due diligence to properly address human rights risks.

The EIB’s operations outside of Europe, based on the general principles guiding EU external action and safeguarded by a complex web of internal procedures, guidance notes and handbooks, should never leave anyone deprived of their rights. Even if affected individuals can use the EIB CM to seek remedy and justice, their problems should be anticipated and prevented before harm is done. How is it then possible that the largest multilateral development bank in the world ends up furthering human rights abuses?

THE OLKARIA GEOTHERMAL PLANTS: JEOPARDISING THE EXISTENCE OF MAASAI COMMUNITIES

One hundred kilometers north-west of Nairobi, the Olkaria area in Hell's Gate National Park is home to wildlife, pastoralist Maasai communities and geothermal water.

In 2010, the EIB, together with the World Bank, Kreditanstalt für Wiederaufbau (KfW) and the French Development Agency invested in the extension of the geothermal power plants Olkaria I and IV. This resulted in the resettlement of four indigenous Maasai villages to a remote place called RAPland, a name that refers to the acronym RAP – Resettlement Action Plan.

Despite the EIB's long experience in the region, it failed to recognise the indigenous peoples' status of the Maasai. Following numerous complaints from the impacted people, in 2014 the EIB CM confirmed the loan's non-compliance with the lenders' environmental and social standards. The non-recognition of Maasai as indigenous people as well as several other breaches resulted in serious negative impacts on the resettled communities, which have not been fully addressed.



The Olkaria geothermal project resulted in the resettlement of four indigenous Maasai villages (Photo: Bigstock/ Oksana Byelikova)

Implementation of the lenders' action plan, which was finalised in 2016 during a mediation agreement between the impacted community and the project promoter (the Kenyan public electricity company KenGen), has been delayed, largely due to failures on the side of the company. This delay caused serious problems that undermine the culture and livelihood of resettled communities.

In 2014 the four Maasai villages were resettled from a 4,200 acre area to an area of 1,700 acres of land on loose volcanic soil. This area, which turned out to be largely unsuitable for grazing and extremely prone to soil erosion, has made people's lives more dangerous and costly. The slopes and gullies make raising livestock in RAPland nearly impossible: cows have fallen to their deaths. The communities' herds had to be reduced, affecting their economic livelihood and cultural practices.

Flash-floods during the rainy season leave infrastructure like roads and water pipes damaged for months. Unstable and precipitous gullies threaten the new houses. In September 2019, six houses were completely cut off due to a bridge collapse. A few months later, several animals lost their lives by falling into a deep cleft.

The children's plight is no less problematic. Walking from the edge of the settlement to the school takes well over an hour for the smaller children, each way. When a flash-flood hits, many roads are cut off and children cannot go to school at all.

Even now, the future of the Maasai remains uncertain. Despite promises, a formal land title has not been transferred to the community. Instead, their residence is only secured by a leasehold with an annual fee. To make things worse, the village is now flanked by two large plots which are part of the Akiira One geothermal project, a new exploration of the potential for geothermal power that is set to once again disrupt the livelihoods of this recently resettled community.



Flash-floods during the rainy season cause severe damages to roads and other infrastructures, making life in RAPland particularly difficult (Photo: CEE Bankwatch, 2019)

THE CRUX OF THE PROBLEM: HUMAN RIGHTS DUE DILIGENCE AND AN OUTDATED MODEL OF DEVELOPMENT

In 2011, academics Nicolas Hachez and Jan Wouters published a study on environmental, social and human rights accountability at the EIB. Their conclusion was clear: *“Human rights considerations are weakly embedded into the EIB’s appraisal and monitoring process, as human rights impact assessments are not mainstreamed in practice”*⁸³. Almost ten years later, it is highly regrettable and concerning that this critical conclusion remains valid.

The EIB Environmental and Social Handbook provides tools for assessing the projects’ compliance with the development mandates of the Bank and its social and environmental principles and standards. It includes a number of “safeguards” to be used during the appraisal process⁸⁴, among others: *“In-depth assessment of the likelihood and severity of identified impacts is necessitated, so as to ‘prioritise actions to address actual and potential adverse human rights impacts (by) first seek(ing) to prevent and mitigate those that are most severe’ (UNGP 24). The likelihood that potential human rights impacts may occur is often based on (i) the country context related to specific rights and (i) specific business relationships that pose particular risks to human rights.”*⁸⁵ If deemed necessary by the EIB, the promoter may be required to carry out a stand-alone human rights impact assessment and/or other supplementary assessments⁸⁶.

However, the annual Sustainability Reports published by the EIB repeatedly include the following statements: *“No stand-alone Human Rights Impact Assessments (HRIAs) were deemed necessary to be carried out during 2017.”*⁸⁷ *“No stand-alone Human Rights Impact Assessments (HRIAs) were deemed necessary to be carried out during 2018.”*⁸⁸ *“No stand-alone Human Rights Impact Assessments (HRIAs) were deemed necessary to be carried out during 2019.”*⁸⁹ In 2020 the EIB responded to an inquiry from the authors of this study stating that *“since 2015, no standalone human rights impact assessments have been required to be carried out by promoters.”*⁹⁰

What the EIB implies here is that the quality of its projects did not make it necessary to perform standalone human rights impact assessments, and that human rights considerations are already well embedded in its environmental and social due diligence process.

This is particularly unsettling considering that at the same time more than five hundred complaints have been submitted to the Bank regarding human rights abuses for only a single project in Kenya, including forced evictions by armed police (see the case study on the Mombasa road, page 51)⁹¹. This raises concerns about how properly the Bank assessed the human rights risks related to the project. It is also striking given that the Bank is supposed to have the tools in place, and the experience, to manage projects located in fragile countries or those considered too risky by commercial banks. Indeed, a key role for the EIB should be to provide financing in challenging historical or economic contexts, which naturally exposes the Bank to higher social and human rights risk than commercial banks. As such, the EIB should be expected to scrutinise these parts of its portfolio carefully.

One can find risky projects with even just a brief screening of the list of projects outside the EU that the EIB signed in 2019. Several projects are located in countries such as Laos⁹² and China,⁹³ which are not free countries according to the Freedom House methodology⁹⁴, or in Ukraine⁹⁵ which is only considered partly free. The nature of certain EIB projects should also require a closer look in terms of their potential human rights impact. This includes the construction of metro lines in India⁹⁶ through the acquisition of about 44 hectares of land and permanent involuntary resettlement, and the construction of solar plants in Senegal⁹⁷ that will cause the economic displacement of almost 800 farmers or nomads. Apparently, the EIB services did not spot sufficient risks related to human rights in these projects to trigger a dedicated assessment. Or is it simply that there was no human rights screening performed at all?

Here lies the heart of the problem: there is no proper human rights due diligence taking place at the EIB.

The EIB does not have a clear enough policy statement, an overarching human rights strategy or adequate systems at the project level. The existing social safeguards neither sufficiently prevent intimidation, threats and forced evictions nor protect the existence and well being of the most vulnerable project stakeholders.

Proper human rights due diligence does not mean social due diligence with some human rights aspects included in it. Human rights due diligence is an ongoing risk management process which aims to identify, prevent, mitigate and redress the potential adverse human rights impacts of an operation. It should provide information about the likelihood and severity of impacts – taking into account the country context, the project specificity and the promoter’s track record – and should 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.

The EIB therefore needs a mechanism in place to ensure proper human rights due diligence, including specific risk screening for every project, risk assessment when red flags are identified, and impact assessments when risks are identified. This process would enable the EIB to tailor a solid monitoring system at the project level. As stated in the Office of the United Nations High Commissioner for Human Rights’s (OHCHR) latest draft study on human rights safeguards and due diligence in development finance: *“Development Finance Institutions (DFIs’) safeguard policy frameworks should integrate an explicit commitment to respect human rights, including a specific reference to applying the UNGPs, with each of the DFI’s and client’s respective responsibilities to respect human rights clearly articulated, recognising that each has their own responsibilities... If human rights risks are not highlighted explicitly in safeguard policies, they will not be taken as seriously: information specific to particular human rights risks will more likely be overlooked; implementation will be inconsistent; and expectations between lender and borrower will not be clear”*⁹⁸.

A screening system at the pre-appraisal stage could easily be based on human rights indicators for civil, political, economic, social and cultural rights, conflict related data or labour rights⁹⁹. Specific criteria linked to the nature of the project and the track record and risks linked to the client’s profile should be included. As mentioned in the OHCHR study: *“... human rights are relevant to all areas of DFI due diligence – project context, client due diligence and project operations and footprint – and should be included as part of the routine steps undertaken to identify and assess risks and, subsequently, to manage risks and impacts”*¹⁰⁰.

For example, when the economic displacement of nomads (some of the most fragile societal groups, directly dependent on natural resources) is at stake in the case of solar plants in Senegal, a further human rights impact assessment should be deemed essential. If credible indicators were used during ex ante project screening, it is likely that projects financed in Senegal would at least require a risk assessment by the EIB, if not a full impact assessment from the promoter.

The EIB claims that its environmental and social due diligence is sufficient to cover risks linked to human rights violations. But in reality, existing processes fall short of providing any methodology or concrete measures for anticipating the likelihood, severity and frequency of human rights impacts, in line with the EIB’s own human rights mitigation hierarchy, before a project is approved by the EIB¹⁰¹. There is also a lack of transparency around decisions from the Bank not to carry out dedicated human right impact assessments. Last but not least, avoiding risks is not sufficient for a bank pretending to become the “EU Development Bank”: all its interventions should generate positive impacts on people’s life and their environment.

THE NAIROBI-MOMBASA ROAD: AN ILL-CONCEIVED PROJECT FINANCED BY THE EIB IN THE NAME OF DEVELOPMENT

The narrow, crowded road from Mombasa towards Nairobi is the main traffic artery of eastern Africa. Kenya's National Highways Authority (KeNHA) is working to expand a 41.7 kilometre section of the route to a dual carriageway standard. The EIB is supporting the project via a €50 million loan. Over the last five years, the resettlement of residents of Mombasa's suburbs living along the route has caused human rights violations.

In 2015, more than a hundred families from the Jomvu area were forcibly evicted from their homes on the roadside to make way for the construction works. Only due to adamant efforts of the affected community to seek help and outreach done by civil society groups did the banks financing the project and KeNHA halt the road works to mitigate the harm caused to the people and revise the Resettlement Action Plan (RAP) for the whole project. However, the mitigation process was not satisfactory, and ultimately the EIB Complaints Mechanism facilitated a mediation process covering complaints from 316 people.

The RAP, despite its revision, should not have been accepted by lenders. It lacks crucial components such as a Livelihood Restoration Framework, which has still not been published, and does not satisfactorily treat women and children as vulnerable groups, despite the fact that they are at risk of becoming homeless or dropping out of school due to resettlement, and face disproportionately negative consequences of these outcomes. The project maps are still not available, even though they are supposed to be part of the RAP. According to the EIB, *"such detailed maps are generally not published"*. The compensation practices still leave affected persons with uncertainty and fear for their livelihoods. Not only are the houses and business structures at risk, but movable structures, stalls, and trees or tree nurseries are also at risk; these structures are the basis of the economic activity of the road dwellers and should also be compensated. There are cases of people not being included in the compensation scheme or of people being compensated with lump sums without any valuation provided.



Despite more than 560 affected people complaining about their evictions or the economic losses they incurred, the EIB has not required any standalone human rights impact assessment (Photo: CEE Bankwatch)

In 2017, the community leaders reported intimidation by the project grievance mechanism established by the promoter. It appeared that, prior to these intimidations, the EIB accidentally disclosed the identity of complainants to the project promoter. The CM later acknowledged this blatant mistake, but not before the complainants had already suffered renewed reprisals.

Despite the revision of the resettlement scheme for the project, between 2017 and 2019 the CM received another 250 complaints on the implementation of the revised RAP¹⁰². This time the CM closed the cases only with a Compliance Report and a one page long Action Plan. In its conclusions, the CM heavily relied on KeNHA declarations, without (for example) using objective verification measures, such as bank transfer proofs for compensation, despite the history of forced evictions in the project. The Action Plan does not ensure direct access to remedy and justice for the complainants, which constitutes its major weakness. It also fails to tackle the lack of trust in the project grievance mechanism, although the CM claims that this grievance mechanism is undergoing reforms.

Even with more than 560 affected people complaining about their evictions or the economic losses they incurred, the EIB has not required any standalone human rights impact assessment from the promoter KeNHA. Instead, the Bank is about to disburse the first tranche of the loan.

HUMAN RIGHTS ARE FAR FROM A PRIORITY FOR THE EIB

The operational weaknesses identified above are unfortunately matched by a lack of political willingness to address the issue – human rights issues have been a low priority for the EIB Management Committee for years. There is not even an EIB vice-president clearly in charge of the topic.

Too often, the Bank hides behind the political green light to operate in a given country, ignoring its responsibilities at the project level. Indeed, the EIB is the EU bank, driven by EU policies, controlled by the European Parliament and the Council, and working in cooperation with the European Commission and European External Action Service (EEAS) in charge of the assessment of the political and social situation in countries of operations. However, this does not mean the EIB is not itself responsible for conducting serious human rights due diligence at the project level, especially given that the Bank operates in very difficult regions when considering the issues of democracy, good governance and fundamental human rights.

At a time when the jurisdictional immunity of development banks is starting to be challenged¹⁰³, the EIB's governing bodies should consider as a matter of urgency the development of a proper human rights due diligence system at the Bank. Such a system would effectively mitigate the negative impacts of EIB projects, improve their development outcomes and alleviate the Bank's exposure to legal and reputational damage.

A noticeable development is that an obligatory human rights due diligence framework is currently being designed at the EU level. In April 2020, the European Commissioner Didier Reynders committed to introduce new rules for mandatory cross-sectoral corporate due diligence for all environmental, human rights and governance impacts in 2021. Such rules could make a significant difference for the EIB and become binding requirements for all EIB clients and for investors backing their operations. The EIB should not wait for this to happen, but rather proactively align its ways of working with the best practices in this field.

There is also room for the European Commission and EEAS to play a more active role in the appraisal process at the EIB, given that both institutions are consulted on every EIB project before their adoption by the Board of Directors (under the Article 19 procedure). Unfortunately, the information provided by the EIB to the Commission is often too limited to enable Commission officials to properly assess the risks related to human rights issues. In its recent evaluation of the External Lending Mandate of the EIB (see Chapter 1), the Commission explicitly recognised these weaknesses, and mentioned that *“Human Rights due diligence should be an integral part of... project preparation”*. In particular, the Commission recommended that the EIB integrate in its contracts with clients *“clauses enabling [them] to suspend disbursements in case of serious breaches of human rights or environmental and social standards”* – something the Bank should have been doing for a long time.

Before approving a project, the Commission should carry out a detailed check to ensure that the EIB has properly assessed the human rights risks and eventual impacts of projects early in the project cycle. When red flags emerge, the Commission should not provide any guarantee to the project and oppose it via Article 19 and via its director on the EIB Board of Directors.

RECOMMENDATIONS

TO RAISE THE BAR ON THE PROTECTION AND PROMOTION OF HUMAN RIGHTS AT THE EIB:

/ 1

The Bank must develop an overarching and coherent **three pillar Human Rights Framework** consisting of a strong policy statement, a Human Rights Strategy and a sound human rights due diligence system at the project level¹⁰⁴.

A firm policy statement committing the EIB Group to respect for human rights should be added to the existing Statement of Environmental and Social Principles and Standards, which should be named **the EIB Statement of Environmental, Social and Human Rights Principles and Standards**.

A new **Human Rights Strategy** should ensure that human rights specific risks and impacts are considered, prevented and mitigated at all stages of the project cycle. It should describe how the Bank will promote a human rights based approach among its stakeholders, clients and counterparts. It should make clear what the red lines are for the EIB not to support a project because of human rights risks.

A sound due diligence process should commit the Bank to perform systematic human rights due diligence at the project level. This should be based on

1 / human rights risk screening and human rights risk assessment (HRRA) by the EIB;

2 / human rights impact assessment (HRIA) required from the promoter when the human rights risks related to the projects are significant;

3 / monitoring and reporting procedures; and

4 / access to remedy.

More details on this due diligence system are described below:

The EIB should revise its Environmental and Social Handbook to complement environmental and social due diligence with human rights due diligence, including:

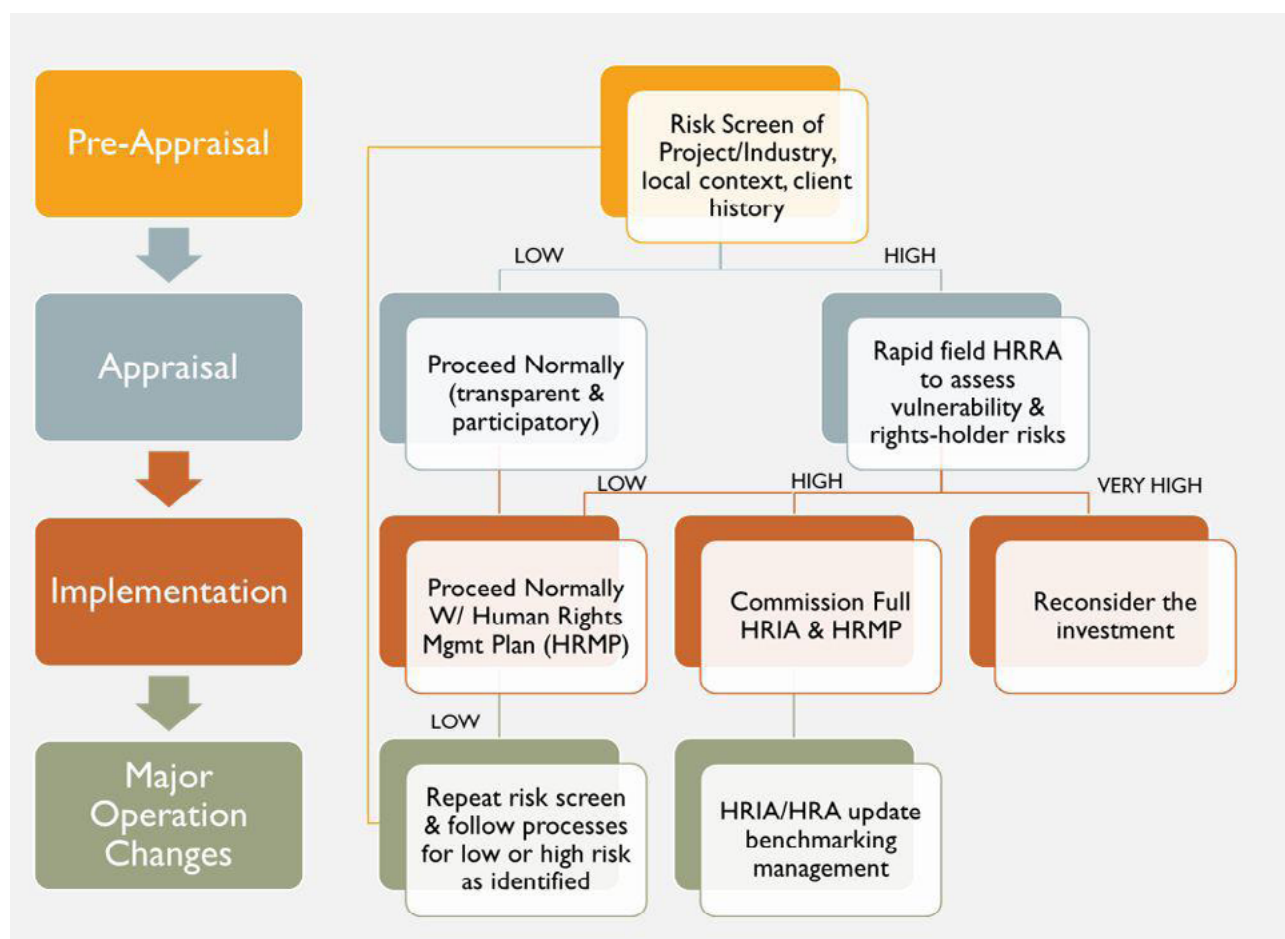
I A risk screening performed at the pre-appraisal stage. The EIB should develop a specific methodology and indicators for this screening in order to assess the level of sensitivity of the country context, project-specific aspects including cumulative impacts, and the client's human rights record (for example on public participation, approach to protest, human rights defenders or criminal connections). Sound indicators for assessing national and regional contexts need to be used, alongside sector-specific indicators.

II When the risk screening identifies a high risk, a participatory and gender-sensitive human rights risk assessment (HRRA) 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.

III The 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).

The whole due diligence process, as well the methodology used, should be made public in advance of the project approval, in line with the common practice of other MDBs. The results of such due diligence should be an essential part of the EIB Environmental and Social Data Sheets, which could then be renamed **Environmental, Social and Human Rights Data Sheets**.

The graph below provides an example of how a proper human rights due diligence system can be applied at the EIB. This proposal is based on previous work from the US organisation Nomogaia.



/ 2

The Bank should develop **specific policies on human rights defenders and protocols to prevent and respond to risks of reprisals**, ensuring meaningful access to information, robust free, prior and informed consent (FPIC) of indigenous peoples and all other affected communities in case of land-related projects.

/ 3

The Bank must be equipped enough to ensure **continuous monitoring of the situation on the ground** in order to guarantee that its projects respect the core values of the EU's external action and do not directly or indirectly contribute to human rights violations. The current setup of local EIB offices without any clear connection to the field work does not do enough to ensure this.

/ 4

The EIB lacks **human rights specialists**. It should hire extra specialists and make sure that human rights considerations are taken into account all throughout its decision-making process and are treated as a third pillar of the Bank's safeguards, next to the environmental and social ones.

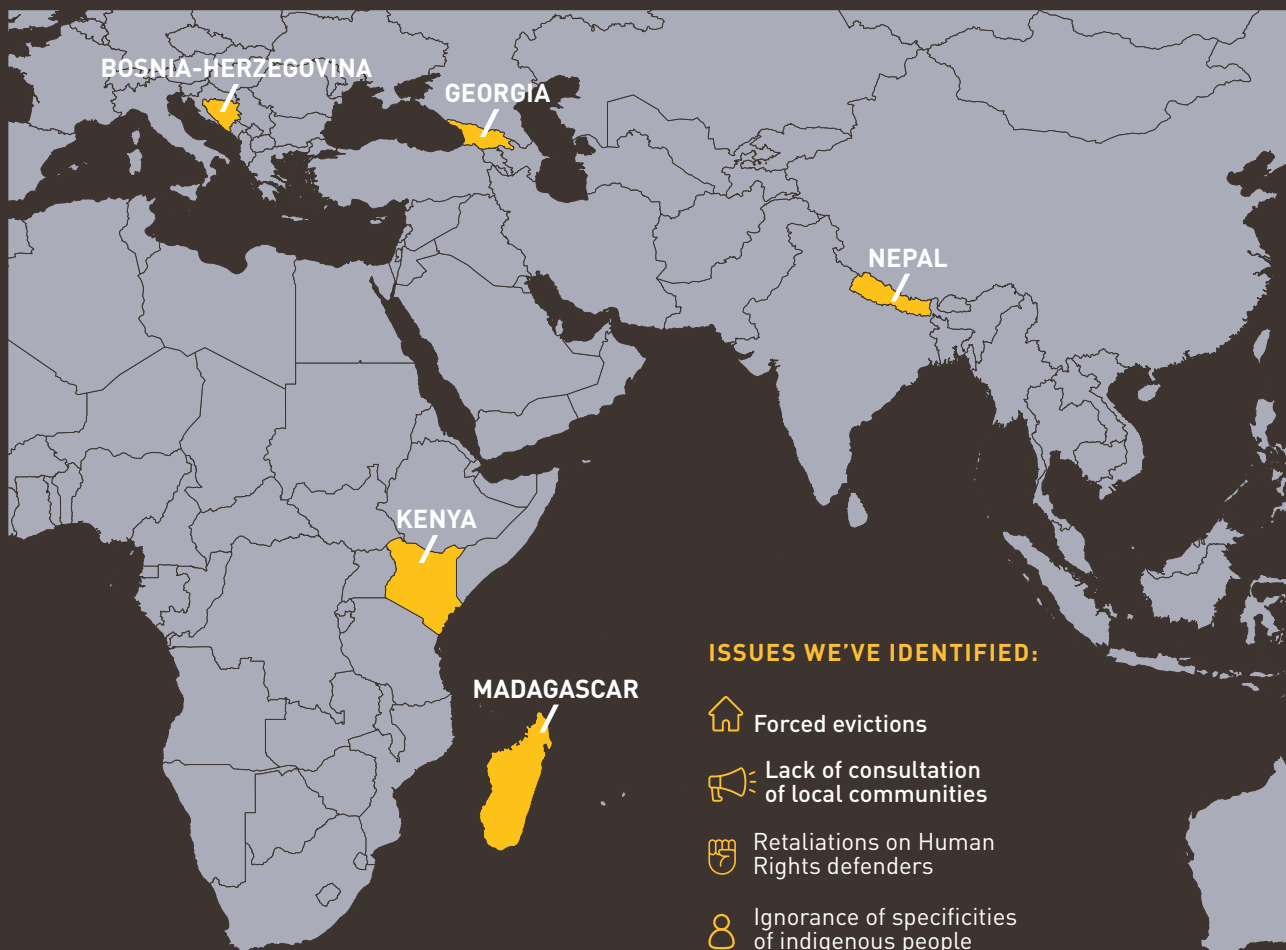
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As the outcome of any human rights due diligence should be a part of the project documentation, **the EIB Board of Directors** should be better informed about human rights risks before they discuss the approval of a project.

THE EIB'S EMPTY PROMISES ON HUMAN RIGHTS

HARMFUL HUMAN RIGHTS IMPACTS OF NUMEROUS EIB-FINANCED PROJECTS

CASES WE'VE MONITORED



WEAKNESSES AT THE EIB

- 1 No proper due diligence at project level
- 2 Lack of development expertise and presence on the field
- 3 Human Rights are a low priority for the bank

OUR RECOMMENDATIONS: DEVELOP A THREE PILLAR HUMAN RIGHTS FRAMEWORK:



1. STRONG POLICY STATEMENT

2. HUMAN RIGHTS STRATEGY

3. SOUND DUE DILIGENCE
SYSTEM AT PROJECT LEVEL



CHAPTER 3

Major flaws in the EIB's environmental and social standards and their implementation

A LONG WAY TO GO ON TRANSPARENCY: BOLD DECLARATIONS BUT LIMITED DISCLOSURE

As a body of the European Union, the EIB should abide by EU transparency standards and principles. These principles are set forth in the EU treaties – of which the EIB Statute is an integral part¹⁰⁵ – and imply that the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible and shall elaborate in their own procedures specific provisions regarding access to the EIB's documents. As a result, the EIB adopted a Transparency Policy, which was last renewed in March 2015.

However, the Bank's Transparency Policy was not adopted to merely satisfy these legal obligations: the policy describes that *“improving the transparency of its institutions and bodies is a key European Union policy aimed at bringing them closer to the publics they serve, as well as highlighting their relevance in contributing to Europe's social and economic cohesion and sustainable development and the promotion of the objectives of the Union's external cooperation”*¹⁰⁶.

Therefore, the EIB officially aims to improve the transparency of its operations and decision making. Indeed, increased transparency is needed, especially for the people affected by the projects the EIB finances, as well as for societies globally, who should be given the information to understand the cost and benefits of the EIB operations that are relevant to them.

Such expectations for the EIB have been clearly established under the Bank's External Lending Mandate, which made it explicit that the visibility and transparency of EIB financing operations, in particular with regard to projects financed through financial intermediaries, should be ensured by improving access to information for the Union's institutions and for the general public¹⁰⁷.

The EIB's operations are an important part of the EU's global efforts to implement the 2030 Agenda for Sustainable Development. In this context, EIB operations should also contribute to the achievement of the SDGs, and specifically the SDG 16¹⁰⁸, through ensuring public access to information and protection of fundamental freedoms in accordance with national legislation and international agreements.

EIB TRANSPARENCY IN PRACTICE: SMALL IMPROVEMENTS, BUT MANY QUESTION MARKS

Despite the creation of a public register of documents and the publication of the minutes of the EIB Board of Directors meetings, the transparency of EIB operations – especially its active dissemination of information – remains limited.

This lack of progress on the transparency front is clearly visible in the Aid Transparency Index, currently the only independent measure of aid transparency for the world's major development agencies, produced by Publish What You Fund. In 2020, the EIB scored "fair" (58/100 points) and stood far below some of its peer institutions, such as the EBRD, the World Bank or the Asian Development Bank (ADB)¹⁰⁹. The Index pointed to several areas of poor transparency for the EIB, in particular the lack of data and documents that are essential to assess whether a project has achieved its development aims. This includes reviews and evaluations, objectives and results. Indeed, the EIB projects' results are not published, and pre-project impact appraisals as well as reviews and evaluations are only available sometimes¹¹⁰.

It is therefore not surprising that the European Parliament regularly calls on the EIB to raise the bar on transparency. For example, in July 2020, in its annual report on the financial activities of the EIB, the European Parliament called for transparent decision-making, specifically concerning the meetings of the Management Committee and their outcomes, as well as enhanced transparency and access to information, especially regarding the selection, monitoring and evaluation of its activities and programmes. It urged the Bank to ensure the highest level of integrity of its financial intermediaries, and to guarantee that their loans are subject to the same transparency requirements as other types of loans¹¹¹.

SHORTCOMINGS IN THE PUBLICATION OF PROJECT RELATED DOCUMENTS:

In our assessment, the EIB still fails to comply with transparency requirements from its own Transparency Policy and the EU legislation on access to information. It also lags behind the transparency and disclosure practices of other multilateral financial institutions. For instance, despite having created a public register of documents and making more documents available through this register, the EIB still fails to disclose all relevant project related documents or fails to disclose them in a timely manner. The section below highlights key areas for improvements at the EIB.

PUBLICATION OF ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS (ESIAs)

The EIB Transparency Policy requires that a project's summary, which in reality is a very brief description, is published merely three weeks before the EIB Board of Directors' approval. This description may provide links to Environmental Impact Assessments (EIAs) or ESIs. For projects located outside the EU and the EU Candidate Countries, the EIB commits to publish environmental information, but an ESIA must be posted only 30 days before a project is presented to the Board. In comparison, the EBRD publishes full ESIA documents at least 60 or 120 days (for public or private projects, respectively) prior to scheduled Board discussions in order to allow the public to provide comments.

However, even this 30-day rule for the publication of an ESIA is not always observed by the EIB, as recent examples show. In the case of the Mano River Union Road project in Liberia, the ESIA conducted for the project in 2017 was not published by the EIB before the loan approval, nor was it published before the loan was signed in December 2019. We observed the same situation for a loan to the Bhopal metro project in India, which was signed in December 2019.

ENVIRONMENTAL AND SOCIAL DATA SHEETS

The EIB's environmental and social appraisal of individual projects is summarised in the Environmental and Social Data Sheets. These documents are released only after the Board of Directors has already taken its decision on a specific finance proposal. This is problematic especially for projects with anticipated environmental and social impacts for which ESIA's have not yet been conducted. In comparison, the IFC publishes its Environmental and Social Review Summary (findings and recommendations related to environmental and social considerations) either 60 or 30 days before the relevant Board meeting, depending on the type of project at stake.

There are also other key documents related to the environmental, social and development assessments of its operations that the EIB does not publish:

- >> Result Measurement Sheets (ReM sheets);
- >> Overall Environmental and Social Assessment Form, which includes information on the EIB's risk rating of the project and calculations of the greenhouse gas footprint assessment, including a description of footprint calculations assumptions;
- >> Project monitoring reports;
- >> The Economic Rate of Return and Financial Rate of Return calculations, which calculate economic and financial rates related to the project, including environmentally-related considerations such as the cost of environmental externalities.

Once selected for financing, projects are also subject to additional assessments that are not currently being made public. These assessments may only be made available upon request and only after project approval, and they may also be subject to heavy redactions. However, they are not mentioned at all in the EIB Public register, where all documents containing environmental information should be registered. As they are crucial for the public and civil society to assess the environmental and social merits of a proposed project, the Bank should publish these documents without any redactions.

PROJECT MONITORING INFORMATION

Although the Bank requires project promoters to monitor the impacts of a project during its implementation until its completion, the EIB does not make this information publicly available. In addition, the Bank's own monitoring reports or those commissioned from technical advisors are not disclosed unless an external stakeholder requests them from the Bank. Yet the existence of these documents is not mentioned in the public register, where they should at least be listed.

FINANCIAL INTERMEDIARIES: A BLACK BOX OF EIB FINANCING

As described in Chapter 1, a significant part of the EIB's financing outside the EU takes place via financial intermediaries: commercial banks, national promotional banks, microfinance institutions and investment and equity funds.

The main critique echoed on many occasions by civil society, the European Parliament and academics is the lack of transparency inherent to this type of lending. As a matter of fact, the EIB provides next to no information on where the money ends up. Information about the ultimate beneficiaries is not made public due to commercial confidentiality clauses included in contracts with the financial intermediaries. This makes it impossible to assess the economic and social impact of the loans and prevents the development of a targeted approach to certain sectors or types of SMEs.

Furthermore, the EIB does not provide information on how financial intermediaries have used its funds and whether they have proven capacity and capability to manage the environmental and social risks and impacts arising from their operations according to the EU standards. Information on final projects financed through the intermediaries is unknown, even on an aggregated level. Not applying the same standards to these loans exempts a large part of the EIB's lending activity from transparency and openness principles, fails to ensure any accountability as to the way loans are spent and projects are carried out, and provides no details about their impact on the environment. This approach also prevents people impacted by projects financed through financial intermediaries from exercising their right to complain to the EIB Complaints Mechanism and the European Ombudsman.

Bankwatch's research showed that the EIB provided over € 22 million¹¹² for the construction of at least 19 small and mini hydropower plants through financial intermediaries in Bosnia and Herzegovina, Croatia, Macedonia and Serbia between 2010 and 2014¹¹³. The Western Balkans are under threat of massive and poorly planned hydropower development, with hardly a river or stream left untouched by the plans. However, in most cases the public has no idea about these plans and the Bank's involvement, which creates a major hole in the Bank's accountability. Therefore, the EIB should collect and disseminate environmental information related to projects financed by financial intermediaries to ensure the same transparency standards as for direct operations.

FINANCING FOR HYDROPOWER IN PROTECTED AREAS IN SOUTH-EAST EUROPE

South-East Europe is a biodiversity hotspot, yet its wild rivers are being destroyed by a wave of hydropower projects. In 2018 Bankwatch undertook ground-breaking research to find out who is financing this “hydropower tsunami”. It discovered that at least 82 plants have been financed directly by MDBs on Balkan rivers since 2005. At least 37 of these projects are in protected areas or internationally recognised areas of high biodiversity value.



At least 37 of the hydropower projects supported by MDBs are in protected areas or areas of internationally recognised biodiversity value (Photo: CEE Bankwatch)

The EIB provided over €22 million for the construction of at least 19 small and mini-hydropower plants¹¹⁴ through financial intermediaries between 2010 and 2014 and loans worth over €445 million for individual projects in the Balkan region¹¹⁵.

A conclusion from Bankwatch’s research is that it is difficult to identify the financiers which manage the projects¹¹⁶. For its intermediated investments, the EIB delegates to the financial intermediary central tasks such as due diligence on final projects and disclosure of environmental information. Bankwatch contacted 43 of the EIB’s financial intermediaries and asked whether they had published environmental information on their websites. None of the financial intermediaries sent the links to sections of their websites where environmental information relating to the EIB credit lines is published¹¹⁷. Some of the financial intermediaries even argued that they do not have any obligation to publish environmental data.

The Ilovac hydropower plant on the river Kupa in the north-west of Croatia is just one example of an EIB project located in a protected area of high biodiversity value and financed through financial intermediaries. It illustrates how the EIB’s environmental and social standards and its transparency policies fail to prevent the negative impacts of hydropower plants on sensitive ecosystems, especially when they are financed via an intermediary bank and/or are located outside of the EU.



The Ilovac plant was built in the river Kupa Natura 2000 area without its environmental assessment examining the issue properly (Photo: CEE Bankwatch)

The project used an existing weir, but a concrete reinforcement and inflatable rubber dam raised it from 1.3 metres to 3.4 metres, turning the river into a reservoir stretching several kilometres upstream. The plant, financed in 2014 through the Croatian Bank for Reconstruction and Development (HBOR), is located within the river Kupa Natura 2000 site. This site protects 22 species listed in the Nature Directives, as well as six habitat types specified by the Habitats Directive at European level. The EIA – surprisingly – considered that the dam would not have significant impacts on them. The study also failed to assess the cumulative impacts with two other hydropower plants downstream.

After four years of operation, the Ilovac hydropower plant has started to show its first harmful impacts: at least five relevant studies show a loss of biodiversity in the river Kupa at the location of the Ilovac dam¹¹⁸. The official project monitoring commissioned by the promoter also found that the fish pass was dysfunctional.

R E C O M M E N D A T I O N S

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The EIB should improve its Public register and list all documents held related to its environmental and social assessments, its due diligence and monitoring of projects. Both those documents that are subject to active dissemination and those that are available upon request should be mentioned, in order to allow the public to access them.

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The EIB should review its Transparency Policy in 2021 to clarify disclosure obligations for itself and clients and to align it with the best practices of other multilateral financial institutions.

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The EIB should publish Environmental and Social Data Sheets, ESIA's and Human Rights Impact Assessments documents on its website prior to project approval by the Board, following the practice of the EBRD or IFC.

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The EIB should publish other project-related documents such as Result Measurement Sheets, Overall Environmental and Social Assessment Form, additional environmental or social assessments, project monitoring reports and project economic assessment on its website.

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The EIB should publish allocation lists for each financial intermediary operation and relevant environmental information on final projects.

ENVIRONMENTAL AND SOCIAL STANDARDS: UNCLEAR OBLIGATIONS, SUPERFICIAL DUE DILIGENCE AND WEAK PROJECT MONITORING

The Statement of Environmental and Social Principles and Standards, which constitutes the overarching environmental and social policy of the EIB, was adopted in 2009 and has not been reviewed since. The Statement describes the requirements that the Bank should apply when financing projects and the responsibilities of various parties – the EIB, the project promoter and financial intermediaries in the case of intermediated operations. It is accompanied by the Environmental and Social Handbook, which *“translates the environmental and social principles and standards described in the Statement into the operational practices followed by the staff of the EIB. It explains how Bank staff conducts its routine work on environmental and social matters throughout the project cycle. It describes the extent of the work of the Bank and the responsibilities and roles of other parties, notably those of the promoter and the intermediaries with whom the Bank cooperates”*¹¹⁹. Since 2009, the Handbook has been subject to several internal revisions.

When the Statement was adopted in 2009, the main concerns of NGOs centred around the lack of binding and operational safeguard procedures for project promoters. The EIB's actions were considered inadequate in comparison to the standards set by its peers, such as the World Bank or the EBRD.

In 2013, the EIB developed 10 environmental and social standards which are applicable to EIB financed projects as part of the Handbook.

Unfortunately, more than a decade since the Statement was adopted, not much has changed: despite an extensive web of documents describing the EIB's due diligence and project requirements, the implementation of these standards and the quality of the Bank's due diligence and monitoring remains largely insufficient.

Despite commitments to follow a human rights-based approach when considering the social impacts of the projects, the Bank has so far not developed a proper human rights due diligence and regularly fails to require Human Rights Impact Assessments for its projects, as described in Chapter 2. As a result, the Bank frequently supports projects which violate its environmental and social standards and human rights. The numerous case studies included in this report illustrate this wide gap between the EIB policies and standards and their implementation on the ground. This comes at the expense of both the environment and the rights of local communities.

CORRIDOR VC IN BOSNIA AND HERZEGOVINA: HOW THE EIB BRUSHES AWAY AN INTRICATE POST-CONFLICT SITUATION

The transport Corridor Vc is a motorway planned to run for 330 kilometres through Bosnia and Herzegovina. Various sections of this corridor are being financed by the EIB and the EBRD¹²⁰. Concerns about its environmental impacts and threats to cultural heritage have been raised by local people and cultural figures. The public debates about the project have led to a series of scandals and a deadlock in the motorway's development.

Back in 2014, the European Ombudsman, in a case concerning irregularities in the public tender around a bridge section of the Corridor Vc, concluded that the EIB Management's behaviour was "totally unacceptable" and it "risked putting into question the EU's commitment for strengthening the rule of law in Bosnia and Herzegovina"¹²¹.

More recently, in 2018, the EIB signed a loan for the Mostar South section of the corridor, despite serious irregularities in its ESIA. In 2017, a group of citizens came to the EIB Complaints Mechanism with the concern that the route eventually selected for construction by a decree of the national parliament¹²² was not the one that was subject to the ESIA process. The selected route would cross a large agricultural valley near Blagaj, which may result in the destruction of valuable arable land and would have a negative impact on a cultural site, a quarry that supplied the stones for the old bridge of Mostar – also a UNESCO World Heritage site.



The selected route would result in the destruction of valuable arable land and impact a UNESCO World Heritage cultural site
(Photo: CEE Bankwatch)

The impacted community consists mainly of returnees who were forcefully displaced during the war in the 1990s. Given the lack of sound assessment of the impacts of the projects on the livelihood of this population, they fear that the route modification, which will cross the most fertile lands in this region, is an attempt to disrupt the livelihood of minority refugees in this region in order to destroy the multi-ethnic and multi-cultural character of the region.

Although this route was neither subject to an ESIA nor to public consultations, the EIB CM did not find any wrongdoing in the EIB's due diligence on the project. At the same time, the EBRD, which co-finances the project, identified several gaps in the ESIA and requested that the promoter prepare new documents and conduct public consultations.

Despite the ongoing expropriation, the local community has continued to demand a thorough ESIA and meaningful public consultations and has lodged a new complaint with the EIB CM.

UNTRANSPARENT AND NON-INCLUSIVE ASSESSMENTS OF PROJECTS' IMPACTS

The environmental and social assessments carried out by the EIB, as well as its monitoring of projects and their implementation, all lack transparency. The results of the Bank's due diligence are made public only after the EIB Board of Directors approves a project, which is not consistent with the practices of its peer institutions. The summary of the EIB's environmental and social appraisal is not made public before projects are approved by the Board. Also, the Environmental and Social Impact Rating, which indicates the anticipated level of environmental and social risk for a given project, is not made public at any stage, although it may be available on request. This prevents stakeholders from meaningfully engaging with the EIB before financing decisions are taken and from bringing their possible concerns to the attention of the Bank before due diligence is finalised. Good practice among other multilateral development institutions – timely disclosure and addressing incoming inquiries and comments during project appraisal – is considered by the EIB as unnecessary interference with its top-down decision making process.

UNCLEAR STANDARDS FOR PROJECTS OUTSIDE OF EUROPE

A common practice among MDBs is to clarify which standards explicitly apply to a given project. This information is usually included in the project's description to inform stakeholders about the relevant social and environmental requirements for a project. But the EIB does not clearly identify which of its 10 standards apply to a project or if any derogation was granted to a project. This is particularly sensitive for projects financed outside the EU, for which the EIB requires compliance with national legislation while EU principles and standards (upon which the EIB's Statement is based) apply only "*if practical and feasible*"¹²³. This makes it difficult to understand, especially for affected communities, which standards and requirements projects are supposed to meet. Hence, the quality of a project, and its compliance with EIB standards, depends mostly on the capacity and willingness of the project promoter. Whatever the country, the Bank should abide by international human rights standards, whether or not they have been ratified or are effectively implemented in the investment's host country.

SUPERFICIAL DUE DILIGENCE AND MONITORING OF PROJECTS

Although the existing Handbook should trigger thorough environmental and social due diligence, there is a pool of evidence suggesting that the Bank's due diligence and monitoring of the projects' compliance with the applicable standards remain superficial.

When preparing this report, Bankwatch analysed a wide range of recommendations issued by the EIB CM and the European Ombudsman, and compiled case studies on the environmental and social impacts of EIB financed projects. This research identifies several areas where improvements are needed in order to enhance the protection of the environment and the rights of impacted communities and individuals.

In order to address some of these recommendations, the Bank recently developed a Gender Strategy with an action plan to guide the strategy's implementation and is currently developing a Guidance Note on Stakeholders Engagement. These are steps in the right direction; however, they do not cover all the areas where environmental and social due diligence and monitoring are to be reinforced in order to safeguard and improve the well-being of impacted people and the environment.

RAISING THE QUALITY OF ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS AND RESETTLEMENT ACTION PLANS

When investing outside the EU in the name of development, the EIB should pay heightened attention to the quality of ESIAAs, in order to adequately capture all impacts and to secure the right to a clean environment and sustainable development for project impacted persons. It should also clarify which legal requirements on project-related emissions, as well as which other environmental and technological standards, apply for projects outside the EU. The EIB should refrain from backing projects based on political or geopolitical motives rather than on a robust cost-benefit assessment of a project and its alternatives, including from a human rights perspective. To do so, the EIB should develop a set of binding requirements for promoters on environmental and social impact assessments that would include a reference to mandatory environmental and social protection standards. Other important documents such as RAPs or Environmental and Social Management Systems should meet the highest standards and should be subject to consultations and approval by the impacted persons – achieving broad community support – in order for the EIB to approve them. Several case studies in this report, such as the Olkaria and Mombasa road projects in Kenya, the Corridor Vc in Bosnia-Herzegovina and the Nenskra dam in Georgia, demonstrate how low quality environmental and social assessments lead to harmful impacts that undermine the rights of local populations.

INDIGENOUS PEOPLES, A "SIDE ISSUE" FOR THE EIB

Despite policy commitments to protect the rights of indigenous peoples, the EIB is financing projects which violate these rights. In 2015, the Complaints Mechanism, considering a complaint about the Olkaria project in Kenya (see page 47), found that the EIB, together with other development banks, had failed to identify the impacted Maasai community as indigenous peoples who, according to the Bank's social policies, deserve special consideration during the preparation and implementation of the project. Similarly, in the case of the Nenskra dam in Georgia (see below) the CM concluded that the EIB's due diligence did not comply with its social standard provisions related to indigenous peoples. In both cases the non-recognition of indigenous groups was entirely arbitrary and based on opaque political decisions taken without consulting the impacted communities in regard to their self-identification. These failures to classify impacted communities as indigenous peoples led to the Bank's failure to grant them free, prior and informed consent, hence depriving them of higher levels of protection.

The EIB Handbook refers to self-identification as an important measure for considering indigenous peoples: *"Determining whether a particular group is considered indigenous peoples normally requires reference to the concerned country's own legislation. However, as indigenous people may sometimes not be recognised by their own national context, attention should be paid to evidence of self-identification as indigenous people, to the activity of indigenous people's representative organisations and institutions, to relevant international or regional intelligence, and to shared IFI knowledge and practice. Finally, the technical judgement of qualified social scientists should sought."*¹²⁴ Despite this provision, the EIB uses incorrect criteria for assessing the applicability of its Standard on Rights and Interests of Vulnerable Groups to indigenous peoples. The criteria used to describe indigenous peoples in the Handbook, such as "land/natural resources-dependent" or "primarily self-sufficient production", either do not appear in any other widely accepted definitions of indigenous peoples or ignore the fact that many have suffered land alienation or have become separated from their lands, and may no longer be in a position to "live off the land" and other natural resources as they were in their former territories¹²⁵.



FREE, PRIOR AND INFORMED CONSENT AND BROAD COMMUNITY SUPPORT

The principle of free, prior and informed consent (FPIC) refers to indigenous peoples' right to say yes or no to a proposed intervention on their lands. FPIC is embedded in indigenous peoples' right to self-determination and is protected under various international laws.

However, there are many other communities whose livelihood is based on land and natural resources and who face difficulties in freely expressing and asserting their opposition to projects affecting their lands. Thus, in order to mitigate the power imbalances between these people on the one hand and project investors and authorities on the other, FPIC should be a requirement for all communities affected by land and natural resource-based investments across the EIB's operations.

Broad community support is already embedded in the EIB's standards. The term means a collection of expressions by the affected communities, through individuals and their legitimate representatives, in support of the project. It should be reached through stakeholders engagement in line with the principles of free, prior and informed engagement and informed participation.

Only very recently, the EIB started developing a guidance note for project promoters on how to organise free, prior and informed engagement and what constitutes the indicators of broad community support. If the EIB wants to lead by example and not be involved in land conflicts and land grabbing (including in cases where there are high risks to land rights linked to climate-friendly projects such as solar panels and wind turbines), it must revise its environmental and social safeguards to extend FPIC to all affected communities without further delay.

INVESTMENTS IN NEPAL DEPRIVE LOCAL COMMUNITIES OF THE RIGHT TO DECIDE UPON THEIR FUTURE

Indigenous communities in Nepal's Lamjung District are affected by multiple existing and planned infrastructure projects in the region. One of these projects is the 220 kV Marsyangdi Corridor transmission line, funded by the EIB and the ADB, which provides a means to transport electricity towards Kathmandu and India¹²⁷. The transmission line is part of the Nepal Power System Expansion Project, implemented by the state-run Nepal Electricity Authority (NEA)¹²⁸.

The Marsyangdi Corridor is being built without adequate consultation and information disclosure, therefore breaching the EIB's own environmental and social standards, which include the right to FPIC. Local communities have raised concerns about not having been consulted or given a fair share of the benefits, despite having to shoulder the numerous social, environmental and economic impacts of the hydropower sector.

Indigenous and non-indigenous groups affected by hydropower projects have come together under the umbrella organisation FPIC and Rights Forum to protect their rights. In October 2018, FPIC and Rights Forum filed a complaint with the EIB CM to seek redress for their concerns, including environmental impacts arising from deforestation, loss of community resources, health and safety and insufficient compensation for affected land¹²⁹.



The project appears to be moving ahead without the free, prior and informed consent of affected indigenous populations (Photo: Accountability Counsel)

One of the main concerns was the lack of public consultations and information disclosure. Project documents were provided primarily in English and not translated into Khas Nepali or in the affected indigenous peoples' language. Some people reported being surprised to see stones marked with red paint on their land, finding out only by asking around that they were used to mark the location of transmission towers. In cases where consultations did happen, communities did not receive sufficient notice to be able to participate in a meaningful way.

Local people furthermore complained that the forms and rate of compensation were determined without consultation. The practice in Nepal is that landowners are only provided with a compensation of 10% or 20% of the value for land under the transmission line's right of way, a percentage that is extremely low considering the economic losses, land devaluation, increased health and safety risks, and the many other impacts experienced by the communities. The international best practice is to provide compensation worth 100% or more of the "market value" for the land¹³⁰.

An important factor hindering public participation is also the fear of retaliation. In 2016, the armed police force used violence against communities protesting another transmission line in Nepal¹³¹. Despite threats and intimidations, many affected households have refused to take the compensation and continue fighting for their rights.

In July 2019, the CM released an assessment report proposing to facilitate a dialogue between the parties¹³². Unfortunately, NEA refused to take part¹³³. Disappointed by NEA's lack of commitment to addressing their concerns, the communities filed a complaint with the National Human Rights Commission, which conducted an investigation in February 2020. The CM is also currently investigating the allegations made in the complaint it received, and whether the EIB complied with its own environmental and social rules.

Indigenous people in other parts of Nepal are also challenging the expansion of hydropower projects. In Tanahu District, communities have raised concerns about the Tanahu Hydropower Project funded by the EIB, the ADB and the Japanese International Cooperation Agency¹³⁴. Here again, the EIB is accused of failing to ensure meaningful consultation with affected communities. Local communities have filed complaints with the EIB CM and the ADB to request a mediation process to help them exercise their rights. The CM issued its initial assessment for the case, and the project promoter accepted the collaborative resolution process proposed by the CM and the ADB¹³⁵.

THE NENSKRA DAM: A THREAT TO THE SVANS' CULTURE AND NATURAL HERITAGE IN GEORGIA

In 2018, the EIB approved a loan of €120 million for the 280-megawatt Nenskra hydropower plant in Georgia. The project promoter is JSC Nenskra Hydro, a joint venture between the state-owned Partnership Fund and the South Korean state company K-water. The plans consist of the construction of a 125 metre high and 870 metre long rockfill dam on the Nenskra river with a reservoir area around 176 million cubic metres, and an additional 8.7 metre high dam on the Nakra river.

The Nenskra dam is located in Upper Svaneti, a region in Georgia known for its natural beauty and the unique culture of the Svan people, who continue to cultivate their traditions and pass the Svan language down through generations. It is estimated that Svans constitute approximately one per cent of the Georgian population. In 2018, in reaction to massive infrastructure development plans in their region, a traditional Svan Council, or Lalkhor, demanded the recognition of Svans as ancient, indigenous, aboriginal people afforded the appropriate rights for customary and community property in Svaneti. More than 3,000 signatures have been collected in support of the Lalkhor declaration.



If realized, the project will cause an irreversible damage to the fragile river and mountain ecosystems of the Upper Svaneti region and deprive local indigenous communities of their ancestral lands and traditional livelihoods
(Photo: Bigstock/ Leonid Andronov)

Despite the fact that 1,000 Svans who live in the villages of Nakra and Chuberi would be directly affected by the Nenskra dam, the EIB decided not to trigger its standard on indigenous people. Instead, it mirrored the political positioning of the Georgian government, which denies Svans the status of indigenous people. Moreover, the Bank, invoking the “*protection of the public interest as regards international relations*”, refused to disclose the assessment on which it based its decision not to trigger the indigenous peoples standard. Ultimately, the NGOs Green Alternative Georgia and Bankwatch challenged the Bank’s refusal at the European Ombudsman.

In 2020, the CM concluded that the EIB did not take adequate steps to properly make use of its indigenous peoples Standard. It recommended that the Bank reassess and document whether or not the Svans qualify as an indigenous people under the applicable EIB Standard, using a qualified and experienced social scientist with expertise in social and cultural groups and indigenous peoples’ rights. Moreover, the CM underlined that the EIB “*underestimated social challenges associated with the project particularly as relates to the assessment and management of the potential impacts of labour influx on communities.*”¹³⁷



The Svans impacted by the project continue to be locked in a struggle for recognition as an indigenous people and the protections for their lands, culture and heritage that comes with it (Photo: CEE Bankwatch)

In addition, the Berne Convention on the Conservation of European Wildlife and Natural Habitats is currently dealing with a complaint against the Georgian government. The complaint, lodged by Green Alternative Georgia, challenges the government's decision to exclude the location of the dam from a proposal to the European system of protected areas.

Finally, the project will have significant negative financial consequences for the Georgian national budget. According to a leaked power purchase agreement between the government and the project promoter JSC Nenskra, the project is expected to lead to budget losses of more than €50 million annually, drastically increase electricity prices and create energy security problems in Georgia.

WEAK PROJECT MONITORING AND REPORTING

There is hardly any information published about how the EIB monitors implementation of particular projects, including how social and environmental mitigation measures are put in place and whether the projects meet their objectives. There is only minimal and meaningless information disclosed in the Project Completion Sheets. In addition to a lack of transparency, the monitoring of projects by the EIB is mostly based on information provided by the project promoter. Such information may not always be accurate and may distort the reality of the situation on the ground.

In the case of the Mozal project in Mozambique¹³⁸, the EIB CM recommended that the Bank obtain monitoring information from an independent technical review and assessment. Unfortunately, we have identified similar issues in most of the projects we monitored over the last decade.

As a result, the Bank should strengthen its monitoring of projects, specifically the implementation of mitigation measures, social and environmental programmes and compliance with specific project's requirements. The Bank should also regularly inform the public about the result of this monitoring.

RECOMMENDATIONS

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The EIB needs to use the review of its Environmental & Social standards – scheduled for 2021 – to reinforce its internal procedures and tools, as well as the requirements for its clients, including for financial intermediaries.

a. Nevertheless, it is crucial to flag that a key issue at the Bank remains the gap between its policies and their implementation on the ground, so the recommendations in this section have to be read in tandem with the more fundamental ones raised in previous chapters of this report.

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The EIB should improve the transparency of its due diligence and monitoring processes in order to enable impacted communities and individuals to raise concerns directly with the Bank.

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The EIB should clearly indicate which of its standards apply to a project, also those financed via financial intermediaries, including concrete emission standards and the applicability of its indigenous peoples' standard, and it should provide public information about the broad community support achieved.

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The EIB's due diligence process must be urgently strengthened to enhance the quality of project environmental and social assessments, compliance with its indigenous peoples' standard, resettlement standards and stakeholders engagement.

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The EIB should review its criteria for assessing the applicability of its indigenous peoples' standard in line with universally agreed definitions of indigenous peoples.

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Project monitoring and reporting should be made more transparent and strengthened to ensure mitigation measures and social and environmental programmes are implemented.

SPOTLIGHT ON THE ECONOMIC RESILIENCE INITIATIVE

HOW EXTRA RESOURCES TO TACKLE THE “MIGRATION CRISIS” LED TO BUSINESS AS USUAL FOR THE EIB

The Economic Resilience Initiative (ERI) became a key component of the EIB External Lending Mandate (ELM) during the mid-term review of the ELM in 2016. It was set up to push the EIB to be more active and invest more in regions impacted by the migration crisis, which was then at the top of political agendas across Europe. The aim of the ERI was to respond *“to the challenges in the Southern Neighbourhood and Western Balkans, such as forced displacement and migration, economic downturns, political crises, droughts and flooding”*¹³⁹.

The initiative was incorporated into the ELM with the inclusion of a fourth general objective for the EIB operations – alongside climate, SMEs and infrastructure, the Bank committed itself to *“the long-term economic resilience of refugees, migrants, host and transit communities, and communities of origin as a strategic response to addressing root causes of migration”* (referred to throughout this section as “the fourth objective”).

For the EIB to reach these objectives, extra guarantees worth around €5.3 billion from the EU budget were allocated to back operations¹⁴⁰.

From the outset, it seemed apparent that the EIB would simply put a “migration” stamp on its usual operations in countries and sectors where it had already been operating for decades. Back in 2016, Bankwatch and Counter Balance made these concerns public and regretted this additional mandate awarded to the Bank, claiming on the one hand that the EIB is not suited to the task as it is not a humanitarian actor able to provide short term emergency support, and on the other hand that the EIB should not enter the business of border management if it is to become a responsible lender.

Now that the ERI has been active for three years, Counter Balance commissioned a research study on the implementation of the initiative from the consultancy company Profundo¹⁴¹. Unfortunately, our initial assumptions are confirmed by the conclusions of the research. The outcomes of this analysis are used as a basis for this section.

According to the research, while under the ERI the EIB has to some extent refocused investments in regions dealing with migratory pressures, there has been limited emphasis from the EIB on integrating the fourth objective on resilience and migration into the heart of its procedures and operations. The research also highlighted several concerns that have been raised in other parts of this report, especially regarding gaps in transparency and the lack of human rights due diligence.

DUBIOUS ADDITIONALITY

Since the launch of the ERI, 55 projects have been approved for financing at a total amount of €5 billion¹⁴².

The distribution of these funds has been rather uneven. In the Southern Neighbourhood, Egypt and Lebanon alone make up around 60% of total regional financing, while in the Western Balkans Montenegro and Serbia alone account for nearly 70%.

In the Southern Neighborhood, the increased financing for Lebanon and Jordan – the two countries in the world with the highest shares of refugees in their populations – suggests that the EIB has to some extent reoriented its geographical focus towards countries dealing with migratory pressures.

In the Western Balkans, in turn, changes in the geographical focus of the investments since the implementation of the ERI do not match the relative migratory pressures faced by the different countries inside that region. As an illustration, Montenegro, which is the largest beneficiary of ERI financing, is receiving over four times more financing than North Macedonia, despite much of the migration on the Western Balkans route moving through the latter. Likewise, financing of ERI projects in Bosnia and Herzegovina halved after the launch of the ERI, even though the country has seen a steady influx of migrants since 2018.

In terms of projects financed, the ERI seems heavily focused on large infrastructure projects, with water and sewerage, transport and energy making up 44% of total financing.

Together, credit lines to the financial sector and large infrastructure projects account for around 90% of total financing under the ERI, while lending to health, education and other services account for only a small minority of the total financing. In this regard, projects funded under the ERI appear to be, to a large extent, only a repackaging of the kind of projects that the EIB was already financing in these regions before the ERI was launched.

Still, it is worth noting that the increase in water and sewerage projects appears to be in line with the operational guideline of the ERI, which insisted that the initiative should lead to an *“increase in the share of public sector financing in vital infrastructure sectors such as water and sanitation”*.

Nevertheless, the heavy reliance on credit lines to commercial banks, especially in the Southern Neighbourhood, combined with very limited reporting on their disbursement by financial intermediaries, makes it difficult to assess whether lending in that region under the ERI contributes to the fourth objective.

This is the case in Lebanon, where lending through financial intermediaries remains the dominant form of EIB financing, accounting for 68.5% of total ERI financing. As already pointed out in other parts of the report, this also raises a number of other issues around the very limited control of funds and the extent to which this support for the financial sector actually goes to SMEs and projects that reinforce the local economy and domestic resource mobilisation.

In the Western Balkans, transport is by far the dominant sector for financing under the ERI, accounting for about half of the regional portfolio. This suggests that operations financed in the region are less focused on directly improving the economic resilience of migrants and refugees than they are on pursuing long term objectives and priorities of the EU in the connectivity and transport field, in the context of the possible accession of Western Balkans countries to the EU.

RESILIENCE WITHOUT TRANSPARENCY AND HUMAN RIGHTS?

The legislation establishing the ERI introduced several requirements that should have required changes in the EIB's policies, especially with regard to the assessment and monitoring of investment projects. There is, however, no evidence that – and how – the EIB integrated these necessary changes into its operations and policies.

For instance, the EIB was explicitly asked to “include the necessary provisions on the assessment of the environmental and social impact of investment projects and of aspects related to human rights and conflict prevention”. In this context, the EIB should have been required to improve its human rights due diligence. But, as Chapter 2 made clear, this is still a weak area for the Bank.

In addition, the EIB Environmental and Social Handbook does not include any explicit reference to the fourth objective or the improvement of economic resilience of refugees, host and transit communities¹⁴³. The ELM Decision also called for the application of a free, prior and informed consent (FPIC) policy wherever financing would affect land and natural resources. However, in the most recent version of the EIB E&S Handbook (2018), this policy still remains limited only to indigenous peoples. With regards to the monitoring of investment projects, the EIB was required to “develop indicators for projects providing strategic response addressing root causes of migration”. It remains unclear how the EIB measures the potential impact of its financing under the ERI's fourth objective.

The lack of proper due diligence and monitoring is particularly problematic when taking into account the contexts of countries the EIB invests in. An emblematic example here is Egypt, one of the main beneficiaries of the ERI and a country with a particularly poor human rights record. Without the right precautions in place, projects that might appear to improve social conditions can actually result in harmful consequences.

An example of this is the EIB loan for the depollution of the Kitchener Drain in the Nile Delta Region, one of the most polluted drains in Egypt¹⁴⁴. While this project looks positive at first sight, without the right human rights due diligence it has the potential to cause serious damage to the people living in informal settlements next to the drain. The vulnerability of the “illegal” occupants on the land that is slated for establishment of wastewater treatment must be carefully assessed, especially since the Egyptian government does not offer any special protections for the people living in such settlements.

Other potentially problematic projects include loans for three industrial zones in Lebanon, some of which will be near the Syrian border in areas heavily affected by the refugee crisis. The rationale behind these projects is to “allow companies to operate at a fixed low price, with reasonable costs and good infrastructure” *in order to “expand industrial production, increase competitiveness and increase companies’ abilities to export to Europe.”*¹⁴⁵ As highlighted by NGOs Re:Common and Counter Balance in a recent report on special economic zones¹⁴⁶, these types of investments tend to follow the persisting myth of the “trickle-down” theory, which insists that improving the investment climate for private investors through reduced taxation and public constraints, necessarily triggers economic growth and, in the longer term, the improvement of social and economic conditions for the poorest populations. Empirical evidence about how much such policies contribute to development have, however, cast doubt on the assumptions behind this model. While there is indeed a need to alleviate some of the social and economic strains in the region, there are real doubts about whether such forms of development will truly benefit the local population. Without a clear plan taking into account the needs of the territories, there are serious risks that these industrial zones will be mainly influenced by outside investors to the detriment of local communities.

Hence, it is reassuring that the EIB claims that during the appraisal of the project, the Lebanese authorities confirmed that the industrial zones to be covered under the EIB project would not benefit from a specific or more favourable fiscal regime. Similarly, in its reply to the draft of this report, the Bank states that “the EIB will be involved in the validation of the governance, contractual and operational arrangements of the industrial zones to be funded under the EIB loan. It will thus ensure that the needs of local communities are adequately respected and represented in the governance of the zones for instance. This is a condition for disbursement under the loan”. For EIB operations to truly benefit local populations, ensuring these conditions are respected will be crucial.

CONCLUSION AND RECOMMENDATIONS

These findings raise serious doubts about the added value of the extra financial firepower available under the Economic Resilience Initiative. Overall, it appears that operations under the ERI ended up being largely traditional EIB loans with an added “migration” label. It is unclear to what extent the EIB has truly oriented a part of its activities towards addressing problems related to migration and the resilience of transit countries.

The lack of clear indicators for measuring long-term impact on economic resilience, as well as insufficient reporting on the results of financing through credit lines, also complicates a comprehensive assessment of the alignment of ERI financing with the stated goals of the ERI.

As flagged in other parts of the report, public disclosure of key documents is sometimes missing, even though such disclosure is legally required under the EIB External Lending Mandate. This lack of transparency hampers the ability of EU institutions, recipient countries, civil society and affected communities to scrutinise the EIB activities under the ERI.



In conclusion, the authors of this report are not calling on the Bank to be more active in the field of migration. Indeed, the fact that first investments under the ERI were not clearly linked to border management or border control is a relief.

If the EIB is to be a responsible lender, it should not get closer to the border management business. There is no role for the EIB in pretending to be a humanitarian player, either, as it is a long-term lender. Pretending to be a key actor in the field of migration could, on the contrary, be viewed as an opportunistic move by the Bank, mainly justified by the possibility to access additional guarantees from the EU budget to back up its operations.

Therefore, it is crucial for the Bank to focus on the long-term development of the territories where it is active – which it should have been doing for decades – instead of labelling its business-as-usual operations with a “migration” stamp.



Without proper due diligence and monitoring, projects that might appear to improve social conditions risk resulting in harmful consequences for local communities (Photo: Bigstock/lexan)



CHAPTER 4

The way forward: **key recommendations for a fundamental reform of the EIB**

In light of the critical findings spelled out in previous chapters, this section highlights key recommendations for the EIB, its shareholders and EU institutions to reorient the activities of the EIB if it is to fulfill its development mandate.

RECOMMENDATIONS

TO THE EIB: FROM BUSINESS MODEL TO PROJECT-LEVEL DUE DILIGENCE, DEEP CHANGES ARE NECESSARY

It is encouraging that, as its President Werner Hoyer stated, *“the EIB is ready and willing to do more”*¹⁴⁷. Indeed, very concrete steps are needed. In order to maximise the positive impact of the Bank’s action on the sustainable development of its countries of operation, a more rigorous investment selection prioritising quality over quantity appears necessary. EU public finance will be key for the EU to achieve the SDGs, but with that objective in mind, business as usual is no longer an option.

/ 1

PRIORITISE DOMESTIC RESOURCE MOBILISATION AND INEQUALITIES REDUCTION

1. Put positive development impacts at the core of projects' assessment through tailored indicators measuring the reduction of inequalities; tax revenues generation for host countries; and impacts on gender, fragile and marginalised communities.
2. Stop supporting projects with little development additionality and clients favouring profit maximisation, such as private equity funds. Development outcomes should take precedence over profitability: the financial sustainability of the EIB should not undermine its ability to invest in higher risk areas, or focus on projects where development returns are high but profitability may be low. Incentives for EIB staff should be linked to development outcomes and impacts rather than promoting disbursement and "getting money out of the door".
3. Cease the problematic financing of PPPs. The experience of PPPs in Europe has been controversial, and EU development finance institutions should review their approach to PPPs. The EIB's role goes beyond ensuring financial profitability for the banks and project promoters, and the public interest should prevail in all its operations. Therefore, the EIB should not promote a failed development model outside of Europe, especially when it comes to investments leading to the commercialisation and privatisation of the health, education, water and sanitation sectors.
4. Develop expertise on development issues at the EIB, and reinforce the local presence of staff focusing on development in its countries of operation. The current business model of the EIB – lean management and a top-down approach – is not functional in a development context.
5. The EIB should not be used primarily as a vehicle for the EU's economic diplomacy and the promotion of EU business interests, but rather to promote an equitable model of development that respects and promotes human rights, civic participation, and contributes to peaceful and wealthy societies.
6. Recent moves to push the EIB to be more active in the defense and security fields, as well as into migration management and border control, are not in line with the EIB's primary missions and should not be part of the mandate of a socially and environmentally responsible lender.
7. Go further on fighting tax evasion and tax avoidance: the EIB should pro-actively publish the beneficial ownership of all its clients, make the public disclosure of country-by-country reporting a binding requirement for its clients, and report annually on the implementation of its new tax policy and the tax revenues generated through its projects.
8. The EIB should mirror the G20 commitment to suspend the debt of 77 countries following the debt crisis linked to the COVID-19 outbreak. Given that EIB shareholders are all committed to this initiative, the Bank should at least apply a temporary suspension to its pending loans, and should carefully assess the debt impact of its future operations, pending full cancellation of multilateral debt payments to the end of 2021, with an extension for countries still struggling to recover in 2022. In addition, the EIB should express public support to the rapid institution of an impartial, independent debt restructuring mechanism to minimize the negative impact of debt burdens on health and other essential public services.

2

RAISE THE BAR ON THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

The Bank must develop an overarching and coherent three pillar Human Rights Framework consisting of:

1. a strong Statement on Environmental, Social and Human Rights Principles and Standards (replacing the existing Statement on Environmental and Social Principles and Standards).

2. a new Human Rights Strategy. Alongside the Future EIB Climate Roadmap and Gender Strategy, this overarching strategy should integrate specific policies on human rights defenders and protocols to prevent and respond to risks of reprisals. It should explain how human rights specific risks and impacts are considered, prevented and mitigated at all stages of the project-cycle, and describe how the Bank will promote a human rights-based approach among its staff, stakeholders, clients and counterparts.

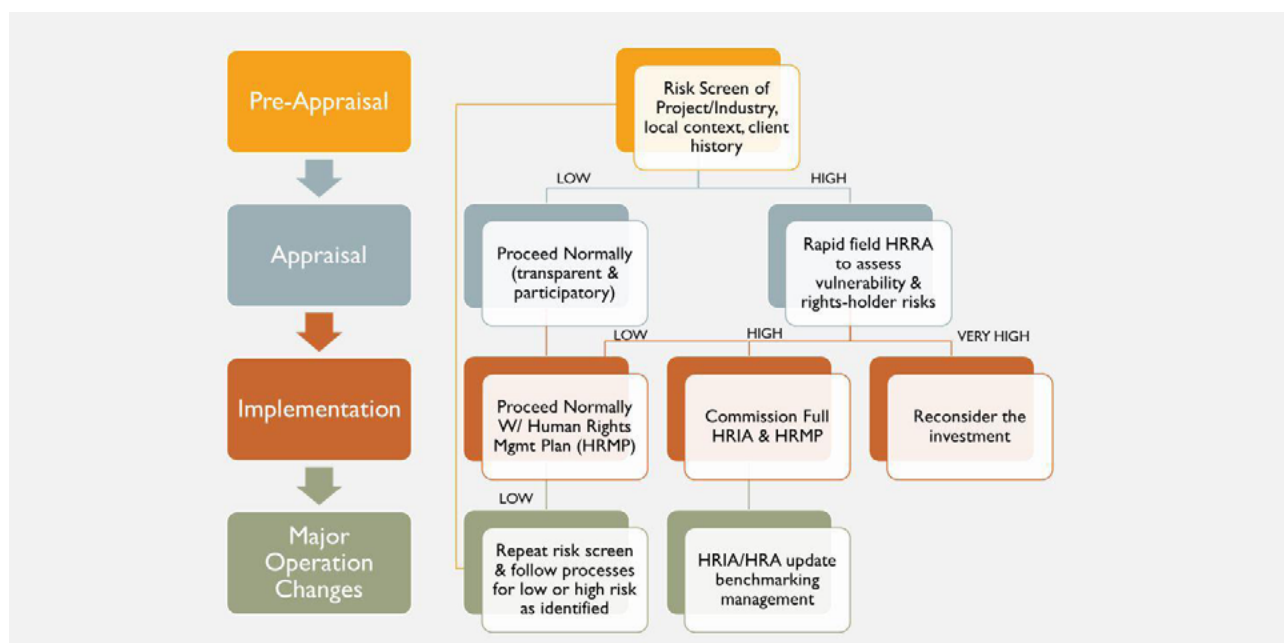
3. a sound system of human rights due diligence at the project level, as described in chapter 2. A “do no harm” and “only do good” approach should prevail to ensure the projects the EIB supports respect the core values of the EU external action and do not directly or indirectly contribute to human rights violations.

The upcoming review of the EIB environmental & social standards is the optimal moment to introduce the three pillar Human Rights Framework.

>> Ensure that local communities and citizens affected by EIB operations are meaningfully consulted and have access to an effective and independent complaints mechanism (a reinforced EIB Complaints Mechanism and access to the European Ombudsman), including the right to effective redress.

>> The right of local communities to free, prior and informed consent (FPIC) should be upheld for all land-related projects, in line with prevailing best practices, as the only way to effectively prevent land conflicts and uphold the rights of local communities to decide upon their own life and future.

>> The EIB should review its criteria for assessing the applicability of its indigenous peoples standard in line with the widely accepted definitions of indigenous peoples.



How a proper human rights due diligence system could be applied at the EIB

3

ENHANCE TRANSPARENCY AND CONTROL OVER EIB FUNDS

>> Raise the bar on transparency: The EIB needs to step up transparency in its governing bodies and at the project level. Instead of systematically hiding behind business confidentiality, the Bank should let public interest prevail. Particular focus should be placed on raising the transparency of the EIB operations conducted via financial intermediaries.

>> The Bank should publish information from its environmental, social and human rights due diligence prior to scheduled project approval to align with the best practice of other multilateral financial institutions.

>> The EIB should create a state-of-the-art Standard for Financial Intermediaries that will enhance the environmental, social and transparency performance of these operations while maintaining economic benefits. The EIB should actively disclose the following information on financial intermediaries' projects: the name of the final beneficiary, the amount received, the type of project and related environmental information. Moreover, we ask the EIB to clarify contract clauses with intermediaries so that consent for sharing environmental information on final projects becomes required and embedded in the contracts with final beneficiaries.

>> It is high time for the EIB to really implement its self-proclaimed "zero tolerance to fraud and corruption" policy and strengthen due diligence around its clients, including on their tax, corruption and human rights track record.

4

ALIGN ALL EIB DEVELOPMENT OPERATIONS WITH THE PARIS AGREEMENT AND IMPLEMENT A "DO NO HARM" APPROACH

>> The EIB needs to improve the quality of its environmental and social due diligence, clarify project related environmental and social requirements and enhance its monitoring and transparency. A pivotal moment to do this will be during the review of the EIB environmental & social standards in 2020 and 2021.

>> Under its future Climate Roadmap 2021-2025, the EIB needs to adopt concrete action plans to align all its operations with the Paris Agreement and mainstream climate considerations across its portfolio. Investments outside the EU should be covered, so that the EIB focuses its investments in energy efficiency and sustainable small-scale renewables with enhanced local and regional impacts, especially for local communities. By doing so, the EIB would become a key contributor to the external dimension of the European Green Deal.

>> The EIB must phase out all unsustainable lending and review its sectoral policies. For example, the Bank should eliminate financing for high carbon projects like waste incinerators and heavy industry sectors like cement, aluminium and steel that are fuelled by fossil fuels, or use these as feedstocks in their processes. In the transport sector, high carbon projects such as airports, motorways and highways, and ports, should not be eligible for EIB financing.

>> Support should be provided for the relocalisation of agriculture and industry instead of infrastructure mega-corridors based on carbon-intensive projects that encourage the globalisation of value chains and a socially and environmentally harmful trade model. The COVID-19 crisis is demonstrating the crucial need to relocalise activities as a fundamental condition for more sustainable social and economic systems. Unfortunately, the EIB investments in mega-corridors are currently moving us in the complete opposite direction.

>> Refrain from supporting large agribusiness projects based on intensive monoculture for exports and support instead an agroecological transition in partner countries, in line with the 2019 IPCC Special Report on Climate and Land, which demonstrated that to reduce global GHGs and strengthen resilience to climate change, food systems must shift from industrial agriculture approaches to agroecology.

RECOMMENDATIONS

TO THE EIB SHAREHOLDERS AND OTHER EU INSTITUTIONS: TOWARDS A STRONGER MANDATE AND MORE EXTERNAL SCRUTINY ON THE EIB DEVELOPMENT OPERATIONS

/ 1

REFORM THE EU BANK BEFORE MAKING IT THE “EU DEVELOPMENT BANK”

>> The EIB is not yet equipped to be assigned with increased responsibilities in support of EU development policies. The EIB would have to deeply reform its governance, policies and procedures if it, or a subsidiary, is to act as a genuine development bank. The EIB lacks the expertise, skills, human resources and relevant procedures necessary to deliver development results and implement the “do no harm” principle.

There is a significant risk that the current shortcomings in the EIB’s operations are simply repeated in the future under a subsidiary which is likely to end up re-packaging the EIB activities outside of Europe with a new “development” label but without enough emphasis on accountability, transparency and democratisation of the new structure and its governance framework.

Therefore, its shareholders and other EU institutions should not make it the “EU Development Bank” before it takes concrete steps to deliver on human rights due diligence, better align with the development policy objectives of the EU such as poverty reduction, and act in a more transparent and accountable manner.

>> The EIB’s governance structure is 60 years old and has barely evolved since its creation. It fails to fulfill the core criteria of effective development cooperation as expressed in the Paris Declaration on Aid Effectiveness and Accra Agenda for Action (ownership, alignment, harmonisation, results and mutual accountability). The Bank’s shareholders and EU institutions should bring more dialogue, transparency and accountability to its governance structure and strengthen public participation in its policymaking, including from recipient countries.

/ 2

AWARD A CLEAR AND STRONG DEVELOPMENT MANDATE

>> Enshrining transparency requirements and a focus on development impact in the future mandates of the EIB: under the post-2020 EU budget, the EIB will access budget guarantees under the Neighbourhood, Development and International Cooperation Instrument (NDICI). The binding requirements of the previous External Lending Mandate (ELM) of the EIB have brought incremental changes to the transparency, social and environmental standards of the Bank. Therefore, these requirements should not be diluted and should ensure that the EIB operates fully in line with EU policies, and is transparent and accountable in the implementation of these activities.

>> Reinforcing the legal framework under which the EIB operates: the European Commission needs to integrate the EIB in its plan to create new legislation for mandatory corporate due diligence at the European level, which will include liability and enforcement mechanisms and access to remedy provisions for victims of corporate abuse. Ultimately, lawmakers should ensure that the EIB has a duty of care to those affected by projects they finance¹⁴⁸.

>> Improving the functioning of public banks is necessary, since the commercial financial sector is unlikely, of its own accord, to provide the finance needed to support sustainable and equitable social, environmental and economic development, nor to support participatory, transparent and accountable governance.

/ 3

STEP UP EXTERNAL SCRUTINY ON EIB DEVELOPMENT OPERATIONS

>> The European Commission should exert stronger control and a greater policy steer over the EIB's operations to ensure their alignment with the EU priorities and development goals. The Commission should better use the Article 19 procedure to require more information from the EIB about how it assesses, implements and monitors its projects. Any projects involving concerns over human rights, overall development impacts and integrity issues should be blocked at an early stage by the Commission, leading to such projects being either redesigned or abandoned by the EIB. Furthermore, we call on the Commission to make this whole process more transparent by making its opinions under the Article 19 procedure available to the public, which is currently not the case.

>> In light of the repeated failures of the EIB to uphold human rights in its operations, the European Commission should urgently trigger an independent evaluation of the track record of the EIB in the field in order to map problems and areas for improvement.

>> The European Parliament should be awarded stronger competences to oversee and influence the strategic orientations, policies and operations of the Bank. This would include a regular public dialogue with the EIB on its development operations and taking initiatives for the Bank to prioritise development impacts and adopt a pro-poor agenda with a strong gender lens, focusing on poverty reduction, tackling inequalities and leaving no one behind.

>> The Court of Auditors should have full auditing rights over the EIB and should issue regular reports on the effectiveness and impact of EIB operations outside the EIB.

ANNEX

EIB'S REPLY TO THE REPORT

18 September 2020

We thank you for giving the European Investment Bank (EIB) the opportunity to provide its views on a draft of the new report that Counter Balance and CEE Bankwatch Network are planning to launch by the end of 2020 regarding the EIB operations outside Europe.

The EIB welcomes and takes into account the comments and criticism from all stakeholders regarding its activities. However, such comments need to accurately reflect the Bank's activities, its role and its responsibilities in order to continue maintaining a constructive and transparent dialogue.

Within this context, we regret that despite the clarifications already provided by the Bank on earlier occasions on several of the issues and projects raised in your new draft report, the report contains several inaccurate and misleading statements. In that respect, we are providing you with our key comments both in this letter and as comments directly in the draft report when more convenient.

As acknowledged in your report, the EIB is already a major development player. Acting outside the EU on behalf of the Union for almost 60 years, the EIB has developed strong expertise in the relevant regions, with a focus on addressing the SDGs, climate, poverty reduction, support to women and girls, and other key EU policy priorities.

The Bank's External Lending Mandates (ELM) and ACP Investment Facility (IF) have been consistently assessed by independent evaluators as highly efficient instruments with a strong track record that deliver on the policy objectives set by the European Commission, the European Parliament, and EU Member States. As a result, the EIB has a large presence and expertise in developing countries across the world, is also active in the most difficult countries - fragile states and Least Developed Countries (exposure in 43 of 59 LDCs and fragile states), and invests about equally in the public sector and private sector to help countries create balanced, resilient economies.

The EIB shares several of your concerns regarding the challenges of development finance, and is constantly improving and further developing its approach to essential issues such as human rights, environmental and social impacts, the fight against fraud and corruption, as well as compliance and tax related matters. We note that several of these issues are or have been discussed with Counter Balance or CEE Bankwatch Network as part of our ongoing dialogue, or are planned to be further discussed as part of upcoming public consultations.

Furthermore, the Bank has shown its capacity to deliver and adapt swiftly to the EU policy priorities, as shown by our TeamEurope Covid-19 response, where the EIB has worked closely with its European and global partners to rise to the challenge, mobilising support of up to EUR 6.7bn for our partner countries. This response was only possible due to the existing budget guarantees and mandates granted to EIB by the EU legislator (ELM and Cotonou Mandates).

Of course, there are also improvements the EIB can make to the way it approaches development finance and the Bank remains committed to continue to address them in an open and constructive way within the limits of its role and given mandates. We would appreciate if you could take into consideration the comments above and the ones made directly in the draft report annexed to this letter, and publish this letter with your report and/or give us the opportunity to comment on a revised version.

Naturally, we remain at your disposal should you need further clarifications on any of our comments.

Yours Sincerely,

EUROPEAN INVESTMENT BANK

FOOTNOTES

1

Figure extracted from the EIB Activity Report 2019
https://www.eib.org/attachments/general/reports/eib_statistical_report_2019_en.pdf

2

See the relevant EU regulation: Decision No 466/2014/EU

3

The EIB decided in 2011 to suspend all operations in Syria:
<https://www.eib.org/en/press/news/eib-suspends-loans-with-syria>

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See Annual Report 2019 on EIB Activity in ACP and Overseas Countries and Territories
https://www.eib.org/attachments/country/acp_annual_report_2019_en.pdf

5

Figure extracted from the 2019 report on EIB activities in ACP and Overseas Countries and Territories:
https://www.eib.org/attachments/country/acp_annual_report_2019_en.pdf

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Proposal made to the ECOFIN Council on 5 December 2017 <http://www.consilium.europa.eu/media/31950/st15305en17.pdf>

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<https://www.consilium.europa.eu/en/press/press-releases/2019/04/09/european-financial-architecture-for-development-council-sets-up-a-high-level-group-of-wise-persons/>

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"Europe in the World: The future of the European financial architecture for development", Council of the European Union, October 2019, https://www.consilium.europa.eu/media/40967/efad-report_final.pdf

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See for example FAC Council October 2019 or ECOFIN Council November 2019

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"EIB Group contributes € 5.2 billion to EU response to Covid-19 outside European Union", EIB newsroom, 8 April 2020
<https://www.eib.org/en/press/all/2020-096-eib-group-contributes-eur-5-2-billion-to-eu-response-to-covid-19-outside-european-union>

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"Going Abroad: A critique of the European Investment Bank's External Lending Mandate", Counter Balance and CEE Bankwatch Network, 2016 <https://counter-balance.org/publications/going-abroad-critique-of-the-eib-external-lending-mandate>

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See Annex 2 on avenues for reform at the EBRD, as part of the joint NGO input to the High-Level Group, July 2019
https://counter-balance.org/uploads/files/Documents/Briefings-and-Policy-Files/2019-NGO-submission-to-High-Level-Group_July.pdf

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"EU development finance can play a stronger and better role, say CSOs" Counter Balance, July 2019 <https://counter-balance.org/news/eu-development-finance-can-play-a-stronger-and-better-role-say-csos>

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EIB response to the Council, February 2020

16

See EIB President's statement at the Foreign Affairs Council, November 2019 <https://video.consilium.europa.eu/en/webcast/540b70ad-edbd-4242-ac4f-428490085a6c>

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Evaluation of the EIB's development operations under its External Lending Mandate, October 2019 https://ec.europa.eu/info/sites/info/files/economy-finance/elm_evaluation_swd_2019_333_f1_staff_working_paper_en_v3_p1_1048237.pdf

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"EIB plan for €60bn development offshoot sets scene for EU spat", Financial Times, July 2019 <https://www.ft.com/content/c58ddcba-af98-11e9-8030-530adfa879c2>

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"Europe in the World: The future of the European financial architecture for development", Council of the European Union, October 2019 https://www.consilium.europa.eu/media/40967/efad-report_final.pdf

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See EIB 2019 Activity Report
https://www.eib.org/attachments/general/reports/eib_activity_report_2019_en.pdf

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"Q&A: It is 'total nonsense' that EIB has no development experience, Werner Hoyer says", devex, 3 January 2020
<https://www.devex.com/news/q-a-it-is-total-nonsense-that-eib-has-no-development-experience-werner-hoyer-says-96270>

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"EIB Group Policy towards weakly regulated, non-transparent and non-cooperative jurisdictions and tax good governance", March 2018 https://www.eib.org/attachments/strategies/eib_group_ncj_policy_en.pdf

23

As requested by civil society. See Eurodad's briefing from January 2020 on public country-by-country reporting: <https://www.eurodad.org/eu-cbcr>

24

In its reply to our draft report, the EIB flags that "ELM high-level objective set by co-legislators is economic and social infrastructure. There is no mentioning of pro-poor or inclusive growth in the mandate and no provision of the necessary dedicated concessional funding to structure operations in such a way".

25

"The parlous state of poverty eradication: Report of the Special Rapporteur on extreme poverty and human rights", July 2020 <https://chrgj.org/wp-content/uploads/2020/07/Alston-Poverty-Report-FINAL.pdf>

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ABOUT COUNTER BALANCE

Counter

Challenging
Balance Public
Investment
Banks

Counter Balance is a coalition of 9 NGOs whose mission is to make European public finance a key driver of the transition towards socially and environmentally sustainable and equitable societies. Over the last decade, we have monitored extensively the operations of the EIB and led campaigns to make it a more sustainable, democratic and transparent institution.

More information is available at:
<http://www.counter-balance.org/>

ABOUT CEE BANKWATCH NETWORK



CEE Bankwatch Network is the largest network of grassroots, environmental and human rights groups in central and eastern Europe. It monitors public finance institutions that are responsible for hundreds of billions of investments across the globe. Together with local communities and other NGOs Bankwatch works to expose their influence and provide a counterbalance to their unchecked power.

More information is available at:
<https://bankwatch.org/>



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