

Joint CSO Submission
Standard 11: Intermediated Finance
August 2021

Why developing clear and mandatory requirements for FI investing matters

It is welcome that the European Investment Bank is developing a standard on how to improve the social and environmental outcomes and development impact of its intermediated finance investing, given that it comprises 30 percent of the EIB's portfolio. In addition, all operations of the European Investment Fund (EIF, part of the EIB Group) are intermediated, making this standard even more relevant for the EIB Group as a whole. Hence, it is of utmost importance that the standard explicitly covers both the EIB and the EIF.

While investing in financial intermediaries (FIs) can help to mobilise funds and attract private capital for economic development, this form of third-party or 'hands-off' lending also comes with significant risks - in particular around clients' adherence to environmental and social (E&S) safeguards.

It is often perceived that intermediated investments are small and therefore harmless, but this is not necessarily the case. Examples include small hydropower plants which have serious individual and cumulative impacts (eg. in the Balkans), and investments through funds such as the Marguerite Fund. Particularly ironic was the case in which the EIB rightly declined to finance the Belgrade waste incinerator, while its intermediary, the Marguerite Fund II, holds a share in the project company.

In recent years, the International Finance Corporation (IFC) - over 50 per cent of whose investment portfolio is to FIs - has been forced to acknowledge the risks of intermediated lending and has taken some steps to address them. Following critical findings from both the IFC's Compliance Advisor Ombudsman (CAO)[1] and from civil society groups[2], the IFC has reduced high-risk lending through FIs, no longer provides general-purpose loans, and has developed a 'Green Equity Approach' to help to transform not only its own lending but that of its FI equity clients.

In 2019 the EBRD also tightened its rules on lending through intermediaries, clearly labelling certain types of projects as higher-risk and requiring that intermediaries refer such projects back to the EBRD for due diligence before proceeding with investments. The EBRD's performance

requirement also requires intermediaries to disclose such investments and clearly identifies which of the bank's performance requirements should be met by such projects.

In recognition of this increased risk in FI investing and in common with other development banks, we would expect to see EIB's Standard 11 on Intermediated Finance address the following crucial issues:

- Improving screening, scoping, due diligence, appraisal, monitoring and supervision of high-risk clients and sub projects
- Improving development outcomes, including climate action and human rights protection
- Transparency
- Access to remedy

It is deeply alarming that Standard 11 makes little or no attempt to address these fundamental concerns. It is essential that the EIB develop a mandatory FI policy that clearly sets out EIB's E&S commitments and responsibilities so that EIB investment officers, clients and civil society can ensure EIB's intermediated finance does no harm and that affected communities can access remedy. The EIB's operations through the financial intermediaries should be subject to the same transparency and environmental and social standards as its direct lending.

These recommendations on Standard 11 are to be considered in connection with demands already formulated by civil society organisations in the framework of the ongoing review of the EIB Transparency Policy (see [here](#)) and together with demands to significantly reinforce the future "EIB group Environmental and Social Policy".

1. Improving screening, scoping, due diligence, monitoring and supervision of high-risk clients and sub projects

Current EIB draft (11 a. and 11 b.): the EIB delegates responsibility to its FI client to "screen all sub-projects against the EIB's list of excluded activities as regularly amended, and any other environmental and social undertakings as set out in the documentation concluded between the FI and the EIB;" and "identify, assess and monitor the management of the significant environmental and social impacts and risks arising from sub-projects, as applicable, and ensure that agreed environmental and social undertakings are met."

One of the best ways to prevent harm is to spot and avoid risk up front. The first way to do this is via an exclusion list. The draft Standard refers to the [EIB's list of excluded projects](#) from 2013. This list is very out of date and should be updated as part of the Environmental and Social Policy and Standards revision. It does not even exclude coal-fired power plants, let alone newer exclusions such as virtually all other fossil fuel projects.

Once such projects are screened out, the second point is to define exactly which standards intermediated projects need to follow. Paragraph 12 sets this out reasonably clearly for projects in EU, EFTA, Candidate and potential Candidate countries, but paragraph 13 states that *“For sub-projects outside the European Union, the FI shall require that they be implemented in line with the applicable national legislation and the relevant EIB Environmental and Social Standards.”* This is far from sufficient. A financial intermediary needs to be able to tell clearly which of the EIB Environmental and Social Standards are relevant. In the current Standards this is not clear, and this sentence will not be sufficient to clarify.

The EBRD, for example, provides a list of projects that **must** be referred to the EBRD for due diligence and specifies the main performance requirements (ie. Standards) that will need to be adhered to by financial intermediary sub-projects. We would expect at least something similar from the EIB.

Clarifying expectations and minimising risks is all the more important in ‘hands-off’ intermediary lending, as the EIB does not have a direct line of sight to the end use of its funds and must rely on its FI client to flag higher risk sub projects. E&S staff at the EIB must have a more prominent role in screening and assessing FI sub projects to ensure those that potentially pose the risk of causing harm receive enhanced supervision.

Due diligence should establish classification of risks and monitoring requirements, based on a scoping exercise, which will involve community participation.

The International Finance Corporation (IFC) designates FI investments as FI-1, FI-2, or FI-3 according to risk, with FI-1 being the highest category of risk or impact. The World Bank has moved to a risk rating that builds on the categories: low, moderate, substantial, and high, which also applies to FI projects.

A compliance review would aim to ensure that sub-projects comply with EIB standards.

However, in point 11 of the new standard, the EIB delegates all responsibility for social and environmental risk management to its FI clients, including screening, spotting, assessing and monitoring risks and impacts of sub projects. The language appears to even delegate the role of identifying ‘applicable’ standards and then ensuring compliance. To abdicate these powers and responsibilities to FI clients – which rarely have development mandates, experiences or on-staff expertise – is quite literally a recipe for disaster.

The policy does not spell out the ‘applicability’ criteria, and risk categorization for financial intermediaries, and does not require a compliance review to ensure that high risk sub-projects comply with EIB standards.

A recent IED report about the effectiveness of the Asian Development Bank Safeguards (IED, 2020) concluded that ADB’s approach to managing safeguards in FI projects is incomplete at both policy and operational levels. (par 246, p. 92)

A selected finding was that additional attention was needed for monitoring and supervision and that there were weaknesses in ADB’s approach to working with financial institutions. The low risk profile of the private sector portfolio may have also led to implicit confidence in the borrower’s abilities to manage safeguards and expectations of performance that did not materialize. (Box 6: Selected Findings from Non Sovereign Projects, p. 55, IED)

In point 14, the EIB does mention some cases in which FI clients can refer higher risk projects back to the EIB for extra attention, however the provisions are far too vague and lacking in specific definition, while the EIB’s role and responsibility in supervising, monitoring and mitigating risk is not sufficiently clearly spelled out.

This is out of step with current practice at numerous peer institutions and threatens to undermine the EIB’s success at delivering development impact. For example, unlike other institutions, and in a reversal from the commitments the EIB made in previous years,¹ the bank does not commit to third party audits, to site visits, or to enhanced monitoring and supervision for defined high risk projects using ‘referral lists’ or other mechanisms used by peer banks. Instead, the EIB largely relies on its client for information about compliance with E&S requirements – which leaves the door wide open for harm.

Experience shows that EIB’s standards, monitoring and provision of remedy are falling through the cracks at projects financed via intermediaries. In the cases of the Ilovac hydropower plant in Croatia and the bank’s post-construction support for the company running the Blagoevgradska Bistritsa hydropower cascade in Bulgaria, the EIB merely referred NGOs back to their intermediaries and to the national authorities who had already failed to resolve the issues in question. At the Crni Rzav hydropower plants in Serbia, the bank did not even reply to NGO concerns, presumably because doing so would require it to clearly state whether it is an EIB-financed project or not. These and other cases demonstrate that the EIB needs more, not less,

¹ Paragraphs 64-66, “Intermediated Finance,” EIB Environmental and Social Practices Handbook, 2018. https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf

oversight of its intermediated finance investments. Yet, this proposed standard does the opposite.

Likewise, the EIB's proposed language does not require FIs to establish environmental and social management 'systems,' which are a defined term, but instead requests that they develop vaguely articulated 'processes'.

Any delegation of due diligence responsibility to financial intermediaries needs to be balanced by the EIB's responsibility to carry out continuous assessment, monitoring and evaluation, oversight and enabling civil society engagement, as well as ensuring the option is available to affected communities to seek recourse at the accountability mechanism in cases where the FI and its clients do not comply with the requirements of the policy and standard

Better practices at peer institutions:

Given the documented problems with FI mis-categorisation of projects (the incentive is to categorise the projects at a lower risk level to avoid costly due diligence), other peer institutions have developed measures to spot, identify and provide extra capacity and attention to higher risk sub projects funded via FIs.

As mentioned above, the European Bank for Reconstruction and Development (EBRD) has developed a 'referral list'² for higher risk projects, to ensure it both assesses risk categorisation and monitors E&S standards implementation itself in higher risk sub-projects. The Asian Development Bank safeguards include rules for FIs which necessitate ADB management approval of Category A financial intermediary sub-projects. The China-led Asian Infrastructure Investment Bank has recently revised its Environmental and Social Framework [3] to include increased AIIB

² The EBRD referral list is as follows: **PR9 Annex 2 The FI Referral List**

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

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

- (i) Activities involving involuntary resettlement - *EBRD Performance Requirement 5*
- (ii) Activities that occur within or have the potential to adversely affect an area that is protected through legal or other effective means, and/or is internationally recognised, or proposed for such status by national governments, sites of scientific interest, habitats of rare/ endangered species, fisheries of economic importance, and primary/old growth forests of ecological significance - *EBRD Performance Requirement 6*
- (iii) Activities within, adjacent to, or upstream of land occupied by indigenous peoples and/or vulnerable groups including lands and watercourses used for subsistence activities such as livestock grazing, hunting, or fishing - *EBRD Performance Requirement 7*
- (iv) Activities which may affect adversely sites of cultural or archaeological significance - *EBRD Performance Requirement 8*
- (v) Activities in the nuclear fuel production cycle (uranium mining, production, enrichment, storage or transport of nuclear fuels)¹⁰¹
- (vi) Energy generation using nuclear fuels (excluding electricity import/export)¹⁰²
- (vii) Activities involving the release of GMOs into the natural environment – *EBRD Performance Requirement 6*
- (viii) Any micro, small or medium-sized HPPs that do not trigger Category A requirements – *EBRD Eligibility Criteria for Small Hydropower Plant Projects*
- (ix) Any Category A projects included as Appendix 2 to the EBRD Environmental and Social Policy

staff responsibility for monitoring and supervision of what it calls ‘Higher Risk Activities’ funded via FIs. There is also a new requirement for AIIB to have prior approval of high-risk sub projects:

“Prior Approval of Higher Risk Activities. *For all Higher Risk Activities proposed for Bank financing, the Bank requires the FI to furnish its detailed environmental and social due diligence assessment and instruments for the Bank’s prior review and approval.”*

The AIIB defines Higher Risk Activities as *“a) all Category A activities; and (b) selected Category B activities, as determined by the Bank, that may potentially result in: (i) Land Acquisition or Involuntary Resettlement, (ii) risk of adverse impacts on Indigenous Peoples and/or vulnerable groups, (iii) significant risks to or impacts on the environment, community health and safety, biodiversity, and cultural resources, (iv) significant retrenchment of more than 20% of direct employees and recurrent contractors, and/or (v) significant occupational health and safety risks.”*

This definition should still be tightened with regard to environmental impacts, but is nevertheless more than the current EIB draft has.

The Inter-American Development Bank articulates that its removal from sub-project oversight necessitates a **heightened attention to Environmental and Social Management Systems in Financial Intermediaries**: *“An ESMS that meets the requirements of ESPS 1 should be positioned by the Borrower at the proper project management level within the Borrower’s organizational structure for project implementation. In the case of projects that have different components, or where the project involves financing subprojects through FIs, or through institutions or agencies that play the role of intermediary, this will require positioning the ESMS at a sufficiently high level within the organizational structure to enable the Borrower to establish the necessary depth and breadth of project oversight to manage the environmental and social risks and impacts of the project in an effective manner. Furthermore, certain aspects of the ESMS might require delegation, which will necessitate appropriate management oversight by the Borrower. In the case of projects that consist of multiple works or multiple subprojects, the ESMS may be an E&S management framework that acts as an ESMS for multiple subprojects.”*

We would not advocate for this as a replacement for a referral list as it would be hard for the EIB to consistently check the implementation of such systems, however we consider it useful to pay increased attention to this aspect.

Proposal for additions to Standard 11:

- ⇒ All FIs, regardless of the legal personality (EIB or EIF) and of the mode of finance, equity and debt, loan, or other financial instruments, are to be classified as FI and thus subject to FI requirements

- ⇒ Update the EIB's 2013 exclusion list to ensure financial intermediaries do not finance the most destructive types of projects.
- ⇒ Adopt a '**referral list**' approach, where higher risk sub-projects are clearly defined, and therefore automatically flagged and given higher attention, including by EIB staff. This should include sub-projects which may have human rights implications, affect indigenous or vulnerable communities, involve displacement of affected communities, support fossil fuels, projects which fall under Annex I or II of the EIA Directive, or those which impact protected areas and areas of high biodiversity value. Standard 11 needs to specify what this enhanced attention means and should include the EIB being required to carry out site visits, to engage with affected communities and arrange third party audits.
- ⇒ The EBRD and AIIB's policy language **requires bank staff to retain responsibility** for due diligence of high-risk projects, rather than delegating that responsibility to the FI client as EIB's Standard 11 currently does. The EIB needs to adopt similar language to the following: *"EBRD will assist FIs with the appraisal of these [referral list] subprojects. EBRD environmental/social specialists will review the due diligence information collected by the FI, determine any additional information needed, assist with determining appropriate mitigation measures and, if necessary, specify conditions under which the subprojects may proceed."*
- ⇒ Include rules for FIs which necessitate EIB management approval of Category A financial intermediary sub-projects.
- ⇒ EIB clients must be required to provide to the EIB environmental and social information for the purpose of the review of their due-diligence
- ⇒ A compliance review needs to ensure that (high risk) sub-projects comply with EIB standards.
- ⇒ The proposed standard has to provide the 'applicability' criteria of identifying 'applicable' standards.
- ⇒ EIB clients must be required to inform final beneficiaries about the EIB's Environmental and Social Standards and sectoral lending policies and guidelines and ensure their implementation.
- ⇒ Stop providing general-purpose loans to FI clients as IFC has done and instead, implement **ring-fencing of FI investments** to support specific projects that are low-E&S risk and have genuine development impact.[4] Ensure this ring fencing is legally enforceable and traceable.
- ⇒ Mandate an **established ESMS and oversee its placement in the Borrower's governance structure** to increase confidence in implementation as IDB has done.
- ⇒ Ensure that the EIB is involved in **monitoring and ensuring any corrective action** for ongoing FI projects on the referral list and clearly state this in the loan contracts.

2. Improving development outcomes, including for climate action and human rights

Current EIB position: Standard 11 does not mention climate or human rights. However, the EIB's Energy Policy commits to 'phase out support to energy projects reliant on unabated fossil fuels' by the end of 2021, and its public human rights position statement asserts that *"Projects that limit people's individual rights and freedoms or violate human rights cannot receive EIB support"* While the applicability of its human rights policy is unclear (albeit law-bound by the European Charter of Human Rights), the Energy Policy explicitly applies to intermediated finance: *"this policy applies not only to direct investment loans but also to all intermediated operations of the Bank, including those carried out through commercial banks and investment funds."*

The EIB and climate action

The EIB's commitment to end fossil fuel finance, including in intermediated finance, makes it all the more important that the new Standard 11 spells out how the EIB will implement, measure and disclose its climate commitments in FI lending.

A first step is to ensure that the EIB is transparent about which of its FI investments could be exposed to fossil fuel projects. Enhanced transparency – including the name, sector and location of high-risk projects – is required. Additionally, EIB Standard 11 should clarify how climate requirements will be implemented, to enable the EIB and civil society more accurately to measure its contribution to climate action, since mitigation efforts would be more effectively assured.

Proposal for additions to Standard 11: EIB has the opportunity to spell out how it will implement its energy policy and climate roadmap commitments, by clarifying in Standard 11 how FI investing in particular will be handled by EIB. To do this, EIB should:

- ⇒ Adopt a requirement for all existing FI clients are required to comply with the EIB's Energy Lending Policy thus will not finance fossil fuels projects and are required to **track and disclose fossil fuel-related infrastructure investments;**
- ⇒ Ensure that none of its new FI investments results in an **increase in fossil fuel use:** whether for power generation or industrial uses, or for associated facilities such as transmission lines and railways or ports primarily meant for the transportation of coal. This can be clarified in an update of the EIB's 2013 exclusion list.
- ⇒ **Explicitly exclude coal, oil and gas** from private equity fund investments and ensure debt investments exclude fossil fuels. This can also be clarified in an update of the EIB's 2013 exclusion list.

- ⇒ Invest only in FI clients who commit to develop a **portfolio decarbonisation plan** to achieve emissions reductions in line with targets set under the Paris Climate Agreement.

Better practices at peer institutions: Climate action

The International Finance Corporation

The IFC has instituted a number of significant reforms aimed at disclosing and reducing its fossil fuel exposure, including in its FI business. For example, in its [Interpretation Note](#) for FIs from November 2018, the IFC states: “The Exclusion List can be extended by adding more excluded activities, as part of the E&S risk management efforts. For instance, in case of any targeted products IFC will **exclude coal related sub-projects including coal mining, coal transportation or coal-fired power plants**, as well as infrastructure services exclusively dedicated to support any of these activities. In case of projects involving collective investment vehicles such as PE Funds, the coal related investments will be either excluded up front or when this is not feasible IFC will opt out from such investments.”

The IFC also committed in the Interpretation Note to improve disclosure around coal exposure, including by requiring FI clients to report annually to the IFC: “For an FI, E&S performance reports to IFC should typically include: ... Where relevant, the FI clients’ exposures to high risk activities (e.g. coal related activities, palm oil, etc.)”

The IFC also commits to make this information on coal exposure public: “We will require new equity financial intermediary clients exposed to coal projects to publicly disclose their total exposure in this sector.”^[5]

The EIB and human rights

The EIB’s commitment not to finance investments that adversely impact human rights must necessarily apply to FIs, which comprise around 30 percent of its lending and investments. As with its direct investments, this starts with contextual risk screening. The EIB is already struggling to screen FIs for human rights risks: it financed two state-owned Belarusian banks just six months before Lukashenko jailed his political opponents and nine months before he began his bloody and murderous crackdown on labor organizers and democracy advocates. In Egypt, it financed state-owned Banque du Caire despite its multi-year track record of allocating or withholding financing to suit the political will of the president (both under Mubarak and under Sisi). Perhaps most glaringly, the EIB issued a €250m line of credit to Misr Bank just 15 months after it had

frozen the assets of a prominent human rights lawyer accused of undermining Sisi's government through her advocacy.³

Better practices at peer institutions: Human rights

Recognizing that Financial Intermediaries are not neutral actors in the human rights conditions of their home countries, other banks have developed **proactive screening and oversight mechanisms**. EBRD's financial intermediary policy necessitates not only that the Borrower **establish an ESMS and submit annual environmental and social reports on its implementation in sub-projects to the Bank**, but also that it **publishes ESIA's for all sub-projects that would be characterized as high-risk** (Category A). Crucially, these banks apply the full suite of environmental and social standards to high-risk FIs, not ad-hoc and at the Borrower's discretion as the EIB currently proposes.

Proposal for addition to Standard 11

- ⇒ For sub-projects which may have human rights implications, e.g affecting indigenous or vulnerable communities, involving displacement of affected communities, projects which fall under Annex I or II of the EIA Directive, or those which impact protected areas and areas of high biodiversity value, EIB will assist FI with the appraisal of these subprojects, will review due diligence information collected by the FI, assist with determining appropriate mitigation measures and, if necessary, specify conditions under which the subprojects may proceed and will determine monitoring and reporting conditions.
- ⇒ The EIB tends to rely on the due diligence information provided by a client. There has to be a routine check of the client's track record of implementing human rights requirements prior to beginning appraisal. UN Special rapporteurs repositories, human rights organizations reporting and consultations can be used for this.

3. Transparency

Current EIB draft: "In order to enhance transparency on non-financial, sustainability-related information, the FI shall:

- 1. if located in EU and EFTA countries, comply with sustainability disclosure requirements under national and EU legislation which is applicable to their activities; and*

³ <https://rightsindvelopment.org/wp-content/uploads/2019/05/CASE-12-Ahli-United-Bank-ENG.pdf>

2. if located in the rest of the world⁸, comply with the applicable national legislation and make available to the public information on its due diligence policies and procedures, or equivalent, for assessing and managing the environmental and social impacts and risks of sub-projects, commensurate to the FI's size and the nature and scale of its business, where relevant."

Transparency has been a particular challenge in financial intermediary lending, given the longer chain from investor to project; conversely, transparency is all the more important in this type of lending given its higher risk profile. When risks are spotted early on, they are more easily avoided or mitigated, leading to better project outcomes and lower reputational risk. International financial institutions recognise the importance of transparency not only in improving accountability to shareholders and citizens, but in helping to avoid and manage risk.

The EIB's proposed transparency commitment in Standard 11 falls far short of accepted practice at other development finance institutions and it constitutes a setback even in comparison to the current transparency requirements as described in the EIB's environmental and social procedures.

Relying on legal obligations is meaningless, as many of the EIB's intermediaries are commercial banks who have no legal obligations to disclose information about individual sub-projects. The logic of the EIB's Standard should not be merely to follow the legal minimum, but to promote transparency in order to properly identify and address risks at a stage when they can still be mitigated, as well as ensuring that public money is properly used.

Proposal for reforms: the EIB should commit to principles of disclosure and transparency and enshrine best practice, at least in line with other peer institutions, including:

- ⇒ Requiring **time-bound disclosure** of sub-project information in advance of allocation list approval, in line with best practice;
- ⇒ Disclosure of the **name, sector, beneficiary, location and planned approval/signing date of higher risk sub-projects** financed via FIs on EIB's website and on the FI client's website;
- ⇒ Disclosure obligations for the Financial Intermediary regarding environmental and social information about individual sub-projects
- ⇒ Obligation for the FI to provide the EIB with environmental and social documents
- ⇒ Disclosure of EIB's involvement in sub-projects at the **project sites for high risk projects**, ensuring that it is clearly visible and understandable to affected communities.

Better practice at peer institutions: Transparency

The Green Climate Fund

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

“Environmental and social reports. With respect to project and programme funding proposals that have an environmental or social impact, the Accredited Entities (AE's) shall disclose and announce to the public and, via the Secretariat, to the Board and Active Observers:

(a) in case of Category A projects, the Environmental and Social Impacts Assessment (ESIA) and an Environmental and Social Management Plan (ESMP) at least 120 days in advance of the AE's or GCF's Board decision, whichever is earlier;

“(b) in the case of Category I-1 programmes, the Environmental and Social Management System (ESMS)² at least 120 days in advance of the AE's or GCF's Board decision, whichever is earlier;

“(c) in the case of Category B projects, the ESIA³ and an Environmental and Social Management Plan (ESMP)⁴ at least 30 days in advance of the AE's or GCF's Board decision, whichever is earlier; and

“(d) in the case of Category I-2 programmes, the ESMS at least 30 days in advance of the AE's or GCF's Board decision, whichever is earlier.”

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

“In relation to each Category A public sector sub-project to be funded under the Facility, the Accredited Entity shall disclose the Project Summary Document, Environmental and Social Impacts Assessment (ESIA) and Environmental and Social Action Plan (ESAP), and, as appropriate, inclusive of the Resettlement Policy Framework (RPF) and/or Land Acquisition and/or Resettlement Action Plan (LARAP or RAP), and any other associated information required to be disclosed in accordance with the Accredited Entity's Public Information Policy (“Project Disclosure Package”). The Accredited Entity, 120 calendar

days in advance of its Board meeting, shall disclose, in English and the local language (if not English), the Project Disclosure Package on its website and shall require that the Borrower does so in locations convenient to affected peoples, and provide the Project Disclosure Package to the GCF Secretariat for further distribution to the Board and Active Observers and for posting on the GCF website.”^[6]

The World Bank

The World Bank invests in FIs and requires and practices a high degree of disclosure, including of sub-projects supported through commercial banks. Under the disclosure clause of the World Bank’s 2013 Operational Procedure BP 4.03, the World Bank requires its FI clients to disclose as well as permit, in writing, the World Bank to disclose the summary of the Environmental and Social Impact Assessment (ESIA) of any sub-project considered high risk (Category FI-1 and FI-2). In practice, however, the World Bank seems to go beyond summaries by disclosing full reports of impact assessments, mitigation, and resettlement plans.^[7]

Examples include the World Bank’s investments in Turkish banks, TKB and TSKB, for which the World Bank disclosed 208 documents relating to the investments and their sub projects.

The International Finance Corporation

The International Finance Corporation (IFC) discloses different information depending on the type of FI client. It has made several significant reforms over the past five years, largely in response to civil society pressure and a number of highly damaging cases.^[8]

For **private equity fund clients**: in its 2012 Performance Standards, IFC committed to *“periodically disclose a listing of the names, locations and sectors of high-risk sub-projects that have been supported by IFC investments through private equity funds, subject to regulatory constraints and market sensitivities.”* This was updated in 2015 when in response to pressure from civil society, IFC started to disclose all sub projects supported via its private equity fund clients, stating: *“with input from CSOs and other stakeholders, we have improved transparency by now disclosing all private equity fund sub-projects.”^[9]* In 2017, the IFC applied this new rule retrospectively to all PE fund clients since 2012: *“We publish the name, sector and location of every investment of our funds’ portfolio companies. In 2017, IFC fulfilled 100 percent of this requirement for the 63 fund investments initiated since 2012, and published information on more than 387 funds’ portfolio companies.”^[10]*

In a letter from Bank President David Malpass in March 2020, the IFC committed to **further disclosure of its financial intermediary portfolio**.^[11] High-risk and selected medium-risk IFC

financial intermediary clients must now annually ‘report the name, sector, location by city, and sector for sub projects funded by the proceeds from IFC’s [investments].’

The European Bank for Reconstruction and Development (EBRD)

In 2019, the EBRD took steps to improve disclosure in FI lending.[12] PR 9 of the Bank’s Environmental and Social Policy states that:

“PR 9.16: The FI will put in place a system for dealing with external communication on environmental and social matters. The FI will respond to such enquiries and concerns in a timely manner.

*FIs are also encouraged to publish their corporate environmental and social policy or a summary of their ESMS on their website, if available. FIs will list on their website the link to any publicly available environmental and social impact assessment (ESIA) reports for Category A sub-projects which they finance. **FIs will also publicly disclose information on the environmental and social risks of any sub-project referred to EBRD in accordance with paragraph 15 of this PR and the proposed mitigation measures to address such risks, subject to applicable regulatory constraints, market sensitivities or consent of the sponsor of the sub-project.**”*

Also, in the EBRD’s Access to Information Directive, it requires further environmental and social information about FI subprojects to be made publicly available:

*“1.4.7. For Category A Projects and Category B Projects associated with significant environmental and social risks and impacts, the environmental and social sections of the PSD (Project Summary Document) will be reviewed annually and updated as appropriate. **For financial intermediary (Category FI) Projects, the environmental and social sections of the PSD will be reviewed and updated as appropriate, including by way of hyperlinks to the information disclosed by financial intermediary on its website on sub-projects referred to the EBRD in accordance with the ESP.**”*

4. Access to remedy

Current EIB position: Standard 11 contains no mention of the EIB’s accountability mechanism, the Complaints Mechanism (CM). However, the CM policy states that, *“One of the main objectives of the EIB Group Complaints Mechanism is to ensure the right to be heard and the right to complain of EIB Group stakeholders.”*

However, without transparency about which sub projects are supported by the EIB via its FI clients, the EIB is effectively denying complainants their right to be heard and to access redress. In order for civil society to hold the EIB accountable and to ensure any affected communities know who is financing the project affecting them and therefore have the ability to complain to

the CM, it is vital that the EIB improves transparency around its FI lending to both debt and equity clients. This commitment to access to remedy should be spelled out in Standard 11.

The 2020 External Review of IFC/MIGA Accountability^[13] recommended enhanced disclosure to promote accountability. The review recommended that IFC/MIGA should ensure its client “provide information to affected communities both about the client’s grievance mechanism and about the CAO [Compliance Advisor/Ombudsman IFC’s accountability mechanism]” including for “FI sub-projects.” The review recommends that, “IFC/MIGA supervision should **ensure that clients are meeting this responsibility**, in part by surveying diverse community members regarding their awareness of the client’s grievance mechanism and the existence and work of the CAO.”

Proposal for additions to Standard 11:

- ⇒ The EIB should require its FI clients to disclose the EIB’s involvement in sub-projects at the **project sites**, ensuring that it is clearly visible and understandable to affected communities.
- ⇒ Additionally, the EIB should ensure **information about the CM** is disclosed at project sites, including how affected communities can contact the mechanism;
- ⇒ The EIB must monitor its FI clients’ adherence to this requirement.

[1] <http://www.cao-ombudsman.org/newsroom/documents/FIAUDIT.htm>

[2] <https://www.oxfam.org/en/research/suffering-others>; <https://www.inclusivedevelopment.net/policy-advocacy/financial-intermediary-lending/>

[3] Asian Infrastructure Investment Bank Revised Environmental and Social Framework <https://www.aiib.org/en/policies-strategies/download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf>

[4] Former IFC CEO: “we have eliminated our general-purpose loans to any financial intermediaries; we now ring-fence about 95 percent of our lending to financial intermediaries”. <https://www.devex.com/news/opinion-a-new-ifc-vision-for-greening-banks-in-emerging-markets-93599>

[5] Le Houérou, P (2018) [A new IFC vision for greening banks in emerging markets](#), in *Devex* 8 October 2018.

[6] Green Climate Fund GCF/B.21/34 p 71 Annex XV List of conditions and recommendations.

[7] Oxfam (2018) Open Books See <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620559/bp-financial-institutions-disclosure-161018-en.pdf>

[8] See for example: AgriVie case in Uganda (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=180); GMR Kamalanga case in India (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=165); RCBC bank in the Philippines (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=1266); Ficohsa Honduras (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=209) and Dragon Capital Cambodia (http://www.cao-ombudsman.org/cases/case_detail.aspx?id=212).

[9] IFC (2015) IFC’s Work with Financial Intermediaries; see: https://www.ifc.org/wps/wcm/connect/1c3013804a260251bf70bfe54d141794/IFC_FI_FactSheet_April2015.pdf?MOD=AJPERES

[10] IFC (2017) Sustainable Practices for Private Equity Funds Business see: https://medium.com/@IFC_org/sustainable-practices-for-private-equity-funds-business-5d841850f7c5

[11] Letter from the World Bank President to the US Treasury, 20 March 2020.

[12] European Bank for Reconstruction and Development, Environmental and Social Policy 2019.

ANNEX: technical comments to the Standard 11 on intermediated finance

In bold are additional elements we suggest to include.

Elements to be removed are under strikethrough.

Standard 11: Intermediated Finance

INTRODUCTION

1 The EIB uses intermediated finance¹ through a wide range of financial intermediaries (FIs)² to support eligible smaller projects undertaken by SMEs, midcaps and public entities that cannot be financed directly.

2 All projects benefiting from EIB support through intermediated finance are designated as subprojects.

OBJECTIVE

3 This Standard sets out how the environmental and social impacts and risks arising from subprojects shall be identified, assessed for their significance³, managed and monitored, in line with applicable requirements⁴ and commensurate with the sub-project's size, nature, sector, sensitivity to environmental and social risks, socioeconomic context and location.

SCOPE OF APPLICATION

4 The requirements of this Standard apply to intermediated finance as follows:

a. where EIB support is channelled to sub-projects through the FI, the requirements of this Standard apply to sub-projects;

b. where the FI on-lends EIB funding to another FI, the term sub-project includes the subprojects financed through each subsequent FI and the requirements of this Standard will apply to sub-projects;

c. where the EIB provides financing to an FI that is a fund investment vehicle, the requirements of this Standard apply: (i) to the investee companies financed by the EIB through the FI from the time that the EIB becomes an investor; and (ii) to the investee companies financed through the FI prior to the time that the EIB becomes an investor.

GENERAL REQUIREMENTS FOR ALL FINANCIAL INTERMEDIARIES

6 In order to meet the requirements of the EIB Environmental and Social Policy, the FI shall **establish protections, both in its direct operations (e.g. labor force protections, Standards 8 and 9) and in its sub-projects (Standards 1-10).** ~~respect the labour rights of its employees and provide a safe and healthy working environment in accordance with: (i) if located in EU, EFTA, Candidate and potential Candidate countries, the applicable national and EU legislation⁵ to which it is subject; and (ii) if located in the rest of the world, the applicable national legislation and relevant aspects of EIB's Standard 8 on Labour Rights⁶ and Standard 9 on Health, Safety and Security⁷.~~

7 In order to enhance transparency on non-financial, sustainability-related information, the FI shall:

a. ~~if located in EU and EFTA countries,~~ comply with sustainability disclosure requirements under national and EU legislation ~~which is applicable to their activities; and~~

b. ~~if located in the rest of the world⁸,~~ ~~comply with the applicable national legislation and make available to the public information on its due diligence policies and procedures, or equivalent,~~ for assessing and managing the environmental and social impacts and risks of sub-projects, ~~commensurate to the FI's size and the nature and scale of its business,~~ where relevant

c. **make available to the public the key outcomes of above-mentioned environmental and social due diligence implementation as well as sub-projects environmental and social documents collected during the due diligence process.**

d. **At minimum for higher risk projects (Annex I and II of the EIA Directive), publish the project name, sector, location, beneficiary and planned date of approval/signing.**

8 The FI shall comply with specific environmental and social requirements (including reporting requirements) ~~which are adapted to the type of intermediated finance and which are identified as appropriate in the EIB's due diligence process, also taking into account the FI's implementation capacity.~~

9 The FI shall have in place an **Environmental and Social Management System (ESMS)** ~~process~~ for managing environmental and social impacts and risks. This process shall be commensurate to the size, nature, socioeconomic context and location of the sub-projects, as well as the sector's sensitivity to environmental and social risks. Such a process can either be distinct from or integrated in any existing systems operating within the FI, such as the FI's regular credit/investment processes.

~~10 Where requested, the FI shall provide the EIB with information related to~~ **(1) its ESMS, and (2) its capacity to fulfill its process for managing environmental and social impacts and risks. The ESMS will include a requirement that the FI report to EIB about any proposed sub-investment with severe environmental and social risks (see Para 14).**

11 In particular, this process will enable the FI to perform the following steps, **with EIB oversight as appropriate:**

a. screen all sub-projects against the EIB's list of excluded activities⁹, as regularly amended, **EIB's sectoral policies** and any other environmental and social undertakings as set out in the documentation concluded between the FI and the EIB. The eligibility of sub-projects may be further restricted in justified cases;

b. identify, assess and monitor the management of the significant environmental and social impacts and risks arising from sub-projects, as applicable, and ensure that agreed environmental and social undertakings are met;

c. require that the sub-projects comply with the applicable **EIB standards and** legislation as described in paragraphs 12 and 13 below.

12 For sub-projects in EU, EFTA, Candidate and potential Candidate countries¹⁰, the FI shall require that they be implemented in line with the applicable national and EU legislation.

13 For sub-projects outside the European Union, the FI shall require that they be implemented in line with the applicable national legislation, **EU environmental principles, practices and standards, including those enshrined in bilateral agreements with the EU**, and the relevant EIB Environmental and Social Standards.

~~14 Where appropriate, The FI will~~ **may** be required to report to the EIB on potential significant environmental and social impacts and risks arising from specific sub-projects **where these risks are significant. Certain Subprojects from the list of higher-risk projects below must** ~~may~~ be referred back to the EIB due, for example, to their size, nature, socioeconomic context and location, as well as the sector's sensitivity to environmental and social risks. ~~Where applicable,~~ **Appropriate mitigating measures shall be identified by the EIB in consultation with the FI, and implemented accordingly.**

INSERT REFERRAL LIST FOR HIGHER RISK SUB-PROJECTS HERE

15 **The EIB follows up on individual allocations and reserves the right to carry out its own, detailed due diligence for other sub-projects as well.** ~~TWhere possible and appropriate,~~ the FI may receive the EIB's support for managing environmental and social impacts and risks.

16. For sub- projects of more than EUR 25 million and smaller high-risk projects (as identified above) due diligence will be conducted by the EIB's services in line with the EIB's procedures for direct investments.

SPECIFIC REQUIREMENTS

~~Intermediated finance in pursuit of environmentally and/or socially sustainable objectives~~

16 The EIB is committed to environmentally and socially sustainable objectives. As such, the FI ~~Where intermediated finance is fully or partially dedicated~~¹¹ ~~to promoting environmentally and socially sustainable objectives,~~ may be subject to additional requirements, including reporting and undertakings, to demonstrate that its processes and systems adequately factor sustainability risks into investment decisions ~~in line with the EU Taxonomy, as relevant.~~

Equity funds

17 The FI shall put in place an environmental and social management **system (ESMS)** ~~process~~ commensurate to the risk exposure that the Fund Entity is expected to manage.

18 The FI shall ensure the implementation of the above **ESMS** ~~environmental and social management process,~~ including environmental and social procedures as well as the monitoring of the environmental and social performance of its investees, ~~where relevant.~~

19 The FI shall document implementation of the above procedures and publicly report on risk management at the sub-investments of these funds, including human rights risks associated with the contexts where sub-investments or their supply chains are located.

~~19 Where the FI has made specific commitments regarding climate action or environmental sustainability, gender equality or other agreed areas, progress on the agreed indicators shall be monitored.~~

Microfinance operations

20 Microfinance Service Providers (MSPs), which include microfinance institutions and banks (MFIs) or more broadly inclusive finance providers, are characterised by their small-scale operations and specific mission. MSPs shall ensure that their approach to engaging with and managing environmental and social impacts and risks **will consider the risks of exclusionary lending and the potential secondary environmental and social impacts associated with microcredit-funded enterprises** ~~is commensurate to the capacity and size of the financed microenterprises in order to mitigate such impacts and risks.~~ Since the MSPs typically focus on clients from the poorest socioeconomic groups, who are usually vulnerable to social risks, they shall operate in alignment with strict client protection principles.

Additional comment regarding Standard 11 para 13

The environmental and social standards (2013, online October, 2018 version), which are the operational translation of the policies and principles contained in the 2009 EIB Statement of Environmental and Social Principles and Standards state:

*“par. 64. When lending through **(sic)** financial intermediaries and particularly outside the EU, the EIB assesses the financial intermediaries and their capacity to on-lend the EIB funds in line with the EIB’s E&S standards and particular requirements, including those outlined in the Statement of Environmental and Social Principles and Standards 2009. The 2009 statement includes the following principles: the precautionary principle, the prevention principle, the principle that environmental damage should as a priority be rectified at source and that the polluter pays principle.”*

The EIB Environment and social Handbook (2013), which accompanies the standards underscores this by stating: *“To all its operations and activities, the EIB applies a number of core environmental and social standards and processes that reflect international standards and best practice. All EIB-supported operations, independently of the form of financial commitment, i.e. lending, blending or advising, should, inter alia,:*

- *Apply the European Principles for the Environment;*
- *Apply the UN Guiding Principles on Business and Human Rights”*

However, the newly proposed (2021) Standard 11 states: par. 13. *“For sub-projects outside the European Union, the FI shall require that they be implemented in line with the applicable national legislation and the relevant EIB Environmental and Social Standards.”*

This is a dilution of the existing language for two reasons: 1) Standard 11 no longer requires an assessment of FIs’ capacity and 2) reference to the specific principles as outlined in the Statement is no longer made.

1 Operations with FIs which ‘intermediate’ i.e. on-lend the EIB funds to final beneficiaries (including framework loans intermediated through a financial institution), or lend funds to final beneficiaries in relation to an EIB guarantee or use EIB funds to invest in a portfolio of investee companies.

2 Including, but not limited to, commercial banks, national/regional promotional banks, leasing companies and other financial institutions, funds and microfinance institutions. This includes cases where EIB support is channelled to the FI through a public institution or entity.

3 Based on the criteria set out in the EU legal framework.

4 As defined under General and Specific Requirements below.

5 EU Labour and Health & Safety legislation.

6 Primarily on management of working relations, terms and conditions of employment, fair treatment, non-discrimination and equal treatment and opportunity of workers and freedom of association and collective bargaining.

7 Primarily health and safety management and workplace risks.

8 For the purpose of disclosure requirements, Candidate and potential Candidate countries are included in the “rest of the world.”

9 <https://www.eib.org/en/about/documents/excluded-activities-2013.htm>.

10 For projects located in Candidate and potential Candidate countries, the promoter shall consider any timeframes for reaching compliance with specific EU environmental legislation as arranged with the European Union through bilateral agreements and/or action programmes.

11 Sub-projects geared to certain objectives, including but not limited to, climate action, environmental sustainability, gender equality, etc.

List of signatories:

Accountability Counsel



ActionAid International



Arab Watch Coalition



CEE Bankwatch Network



Both ENDS



Counter Balance



Ecoaction, Ukraine



Eurodad



Focus Association for Sustainable Development



Friends of nature EKO ELEMENT



Global Responsibility, Austrian Platform for Development and Humanitarian Aid



Green Liberty, Latvia



Nomogaia



Organic Agriculture Association (OAO)



Recourse



Za Zemiata, Bulgaria

