

# Comments on the EBRD [Environmental and Social Policy \(ESP\) 2019](#)

under [revision](#)

## PR 6 Biodiversity Conservation and Sustainable Management of Living Natural Resources

Primary objective of the Performance Requirement (PR) 6:

In times of accelerating mass extinction of wildlife on Earth, it is necessary to urgently halt and reverse biodiversity loss. That is why there is a need to shift from the concept of 'no net loss of biodiversity' to 'no loss of biodiversity' as being the primary objective of PR 6. All projects should comply with this objective.

This change has already been accepted in the 2022 EIB environmental and social standards.<sup>1</sup> It is also in line with the Kunming-Montreal Global Biodiversity Framework (GBF), a landmark agreement to guide global action to preserve and protect nature through 2030. It was adopted by the State Parties to the Convention on Biological Diversity (CBD) in December 2022 at COP15 in Montreal, Canada, and replaces the Aichi Biodiversity Targets set in 2010. The framework calls for urgent action in achieving the Convention's mission by "halting and reversing nature loss" by 2030. The GBF, along with the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), has clearly stated that land use change, pollution, climate change, and over-exploitation of natural resources are major drivers of biodiversity loss. Public and private financiers are closely linked to these drivers via the activities and sectors they choose to finance. It is increasingly important for financial institutions to align with the goals and targets set out in the GBF and prohibit financing of activities and sectors that are driving nature destruction and therefore do not align with the targets of the Framework. In June 2023, 74 civil society organizations made a call on financial institutions to protect biodiversity and take action in implementing the Global Biodiversity Framework.<sup>2</sup>

Therefore, we suggest the following change in para 4, 13 and 18 accordingly: '(...) *adopt the mitigation hierarchy in the **screening, appraisal**, design and implementation of projects with the aim of achieving **no net-loss**, and where appropriate, a net gain of biodiversity; (...) ensure **no net-loss** and preferably a net gain of priority biodiversity features; (...) result in **no net-loss** and preferably a net gain of biodiversity.*' We also suggest adding a paragraph that this PR aims to align the EBRD with the Kunming-Montreal Global Biodiversity Framework (GBF) mission. Adopting the mitigation hierarchy in the screening and appraisal needs to be added because only including 'design' assumes that the projects will go ahead and just fiddling with the design, whereas some projects need to be screened out.

Detailed comments on the different paragraphs from the Environmental and Social Policy adopted in 2019:

<sup>1</sup> European Investment Bank, [Environmental and Social Standards](#), 2 February 2022.

<sup>2</sup> Bank Information Center, BankTrack, Rainforest Action Network, and Friends of the Earth US, [How Should Financiers Align with the Global Biodiversity Framework?](#), 26 June 2023.

14. The most sensitive biodiversity features are defined as **critical habitat**; which comprise one of the following: (i) highly threatened or unique ecosystems; (ii) habitats of significant importance to endangered or critically endangered species; (iii) habitats of significant importance to endemic or geographically restricted species; (iv) habitats supporting globally significant migratory or congregatory species; or (v) areas associated with key evolutionary processes.

This should be changed as follows:

*‘The most sensitive biodiversity features are defined as critical habitat; which comprise one of the following: (i) highly threatened or unique ecosystems **with unique, superlative natural, biodiversity, and/or cultural value which may sprawl across state boundaries, and thus may not be wholly or officially recognized or protected by host countries or international bodies**; (ii) habitats of **significant** importance to **near threatened, vulnerable**, endangered or critically endangered species **as defined by the IUCN Red List of threatened species and/or in relevant national legislation**; (iii) habitats of significant importance to endemic or geographically restricted species; (iv) habitats supporting globally **or nationally** significant migratory or congregatory species; (v) areas associated with key evolutionary processes; **(vi) priority habitats and habitats of priority species under the EU Habitats Directive; (vii) high status water bodies under the EU Water Framework Directive and free-flowing rivers, defined as bodies of water whose flow and connectivity (longitudinal, lateral and vertical) remain largely unaffected by human activities; (viii) intact primary and old-growth forests; (ix) protected or at-risk marine or coastland ecosystems, including mangrove forests, wetlands, reef systems;**’*

Ensuring whole ecosystem integrity, especially for transboundary ecosystems, should be a key principle in financiers’ institutional policies. Financial institutions should require funding proposals and assessments to evaluate cumulative, ecosystem-wide impacts prior to awarding financing, and prohibit financing to activities which seriously and negatively impact ecosystem integrity.

Point (i) should be better defined to include iconic transboundary ecosystems like the Arctic among other at-risk ecosystems. A footnote is recommended. This proposed definition essentially aims to improve and ensure ecosystem integrity due to the often competing economic and conservation approaches of host country governments, which share resources, and thus management responsibilities, of such iconic places.<sup>3</sup>

For point (ii) the EIB has already included Vulnerable species for critical habitat, but the EBRD should go one step beyond this and include also Near Threatened species - these species will soon become Vulnerable if threats persist. It should also be made clear that relevant national Red List criteria should also be taken into account (as in the EIB standards).

A footnote should be added in points (ii) and (iii): *‘significant importance should be determined in relation to the specific species and environmental conditions of the area concerned by the project, taking particular account of the area’s conservation objectives and ecological characteristics. In case conservation objectives have not been defined for the area potentially impacted by the project, 1% of the national population should be used as a threshold.’*

<sup>3</sup> Friends of the Earth US, [No Go Areas for the International Banking Sector - Iconic, Transboundary Ecosystems](#), August 2023.

The EBRD should not use 1% of the *global* population as a threshold for critical habitat as this cannot be reached almost for any project and doesn't take into consideration the local conservation needs or cumulative impacts. A clear example is the Zarafshan and Bash wind projects in Uzbekistan<sup>4</sup>, where the nesting habitats of several pairs of the Endangered Egyptian vulture and saker falcon were not considered critical habitat.

Point (vi) is in line with the EU Habitats Directive requirements and should be followed by the EBRD in all countries of operation.

Point (vii) relates to the best conserved rivers - for the EU those are defined by the Water Framework Directive. For the rest of the world, this should include all free-flowing rivers.

Point (viii) includes the most important forests in the world for biodiversity and carbon storage. A footnote is recommended as intact and old-growth forests have different definitions around the world: *“Intact and old-growth forests are natural forest ecosystems that are the result of biological and evolutionary processes and that have not been significantly degraded by industrial or other human driven activities. A key characteristic of these forests is that mature trees dominate the canopy and that they contain most or all of their native plant and animal species.”*

Intact and old-growth forests cover a range of related terms including “ancient forest”, “primeval forest”, “mature forest”, and “intact forest landscapes”. The definition of old-growth forests should not rule out forests with visible recent human interventions - for example in the European context it is almost impossible to find completely intact forests. Instead the definition should acknowledge that there could be known human interventions in these forests, but that these forests still have the main characteristics of primary forests such as a large percentage of deadwood, old trees approaching their natural longevity and rare species that depend on these.

The change in this paragraph is in line with the Banks and Biodiversity Initiative<sup>5</sup> which aims to hold banks accountable for their impacts on biodiversity and critical ecosystems, and advocates that banks adopt eight proposed No Go areas. It is led by a steering committee of civil society organizations which includes: BankTrack, the Bank Information Center, Friends of the Earth US, and Rivers without Boundaries.

*18. As a last resort, **biodiversity offsets** may be designed and implemented to achieve measurable, additional, and long-term conservation outcomes that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity. The design of a biodiversity offset will adhere to the “like-for-like or better” principle and be carried out in alignment with the Bank’s PRs and GIP. The client will need to dedicate appropriate staff resources and demonstrate the long-term technical and financial feasibility of undertaking the offset.*

*19. In instances where **biodiversity offsets** are proposed for priority biodiversity features or critical habitat, the client will develop a biodiversity offset strategy or biodiversity offset management plan, as appropriate to demonstrate that the project’s significant residual impacts on biodiversity will be adequately mitigated. In these*

<sup>4</sup> CEE Bankwatch Network, [A False Start for Wind Energy in Uzbekistan?](#), 1 December 2022.

<sup>5</sup> [Banks and Biodiversity - An Initiative to Hold Banks Accountable to their Biodiversity Impacts](#), accessed 14 September 2023.

*instances, the client will retain independent experts with knowledge in biodiversity offset design and implementation.*

*20. Not all residual adverse impacts to priority biodiversity features and/or critical habitat can be offset. In such cases, the client shall redesign the project to avoid the need for such offset, and to meet the requirements of this PR.*

These three articles should be substituted by one:

*'Where a project is expected to have significant impacts that cannot be avoided or mitigated, the client shall undertake to redesign the project. Biodiversity compensation/offsets are not an acceptable measure to achieve no loss or net gains of biodiversity.'*

Public banks and financial institutions should focus on protecting biodiversity and ecosystem viability instead of betting on compensation/offsets while contributing to habitat destruction. There remains a critical lack of sound evidence that offsets and compensation can prevent biodiversity loss. The experience of using these mechanisms at different MDBs has also been unsuccessful all around the world<sup>6</sup> and the EIB closed the door on biodiversity offsets in its 2022 standards.

Moreover, '*independent experts with knowledge in biodiversity offset design and implementation*' do not guarantee the success of offsets, as has been proven in the previous decade.

Last but not least, since the introduction of biodiversity offsets in the EBRD policy, these have been used exactly in the circumstances the IUCN's policy on offsets<sup>7</sup> says they must not be used, and the Amulsar gold project in Armenia<sup>8</sup> and Shuakhevi hydropower plant in Georgia<sup>9</sup> are just two examples of EBRD projects with unsuccessful biodiversity offsetting measures:

- where the mitigation hierarchy has not been followed,
- where meaningful alternatives for the projects have not been evaluated,
- where a project may result in the extinction of species,
- where there is a high degree of uncertainty regarding the success of the offset and a clear lack of governance,
- where the biodiversity value that will be lost is specific to a particular place, and therefore cannot be found elsewhere,
- where the offsets are not measurable and appropriately implemented, monitored, evaluated and enforced,
- where the offsets don't take full account of direct, indirect and cumulative impacts, geographically and over time.

<sup>6</sup> Friend of the Earth US, [Fool's Paradise: How Biodiversity Offsets Don't Stop Biodiversity Loss](#), October 2021.

<sup>7</sup> IUCN, [Biodiversity offsets](#), February 2021.

<sup>8</sup> CEE Bankwatch Network, [Biodiversity Offsetting and Other Problems of the ESIA of Amulsar Gold Project in Armenia](#), 8 January 2019.

<sup>9</sup> Bern Convention, Possible threat to "Svaneti 1" Candidate Emerald Site (GE0000012) from Nenskra Hydro Power Plant development (Georgia), [Report by the complainant with Annex on Shuakhevi hydropower plant](#), 18 August 2017.

21. Where the project occurs within or has the potential to adversely affect an area that is **legally protected, and/or is internationally recognised, or proposed for such status** by national governments, the client shall identify and assess potential project-related impacts and apply the mitigation hierarchy so that impacts from the project will not compromise the integrity, conservation objectives and/or biodiversity importance of such an area.

We suggest replacing this paragraph with the following four articles:

*'Where the project occurs within or has the potential to adversely affect an area that is **legally protected, and/or is internationally recognised, or proposed for such status** by national governments, the client shall identify and assess potential project-related impacts and apply the mitigation hierarchy so that impacts from the project will not compromise the integrity, conservation objectives and/or biodiversity importance of such an area. The project should be subject to an Appropriate Assessment which will evaluate the project's implications for the area in view of the area's conservation objectives, individually and/or in combination with other projects, and identify relevant measures to avoid, prevent and reduce any significant impact). Where the Appropriate Assessment is undertaken as part of or alongside the EIA process, the client shall ensure that the information relevant to the Appropriate Assessment and its conclusions are clearly distinguishable and identifiable in the EIA report.'*

*'For Projects located in EU, EFTA, Candidate and potential Candidate countries, the Appropriate Assessment should be carried out according to the EU Habitats Directive and focus on the species and/or habitats from Annex I and II of the EU Habitats Directive and Annex I and II of the EU Birds Directive. The client shall provide the EBRD with evidence of a) the outcome of the pre-assessment stage ("screening") which justifies why the project is not likely to have a significant effect on the site/area concerned and, therefore, an Appropriate Assessment was not deemed necessary; or b) the Appropriate Assessment. When necessary, a separate assessment should be done to demonstrate that the Project does not significantly affect the achievement or maintenance of good ecological and chemical status under the EU Water Framework Directive or the achievement of good environmental status under the Marine Strategy Framework Directive when assessed at the appropriate scales for these directives.'*

*'For Projects located in the rest of the world, the Appropriate Assessment should be carried out using the methodological guidelines of the European Commission on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC<sup>10</sup> and focus on the species and/or habitats from Annex I and II of the EU Habitats Directive, Annex I and II of the EU Birds Directive, as well as all near threatened, vulnerable, endangered or critically endangered species and/or habitats as defined by the IUCN Red List of threatened species and/or in relevant national legislation. The client shall provide the EBRD with evidence of: a) the outcome of the pre-assessment stage ("screening") which justifies why the project is not likely to have a significant effect on the site/area concerned and, therefore, an Appropriate Assessment was not deemed necessary; or b) the Appropriate Assessment. During the screening procedure, no mitigation measures can be considered.'*

*'In the case that there is no national legislation on Appropriate Assessment, the EBRD should take a decision in the pre-assessment stage ("screening") as part of its due diligence process.'*

<sup>10</sup> European Commission, Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC, 28 September 2021.

These additions to the policy are needed in order for the projects to achieve the same level of protection in all the countries of operation of the EBRD. All around the world, projects must avoid compromising the integrity, conservation objectives and/or biodiversity importance of protected and internationally recognised areas, independently from the local legislation and institutions. Clients should bear the burden of proof of identifying all potential impacts during the assessment process, before finance is provided, in order to avoid sham environmental impact assessments, subpar feasibility studies, etc, once finance is provided. Moreover, the EBRD should follow EU legislation for the projects it finances, including the EU Habitats Directive. A comprehensive assessment that focuses on all important species and habitats should be introduced in the standard – the Appropriate Assessment (AA). This methodology is successfully applied in the EU Member States, has clear guidelines and can easily be adapted to other countries. For the EFTA, Candidate and potential Candidate countries the AA legislation is in any case an obligation, and for the rest of the world the methodology for screening and assessment as per article 6.3 of the EU Habitats Directive can be used (we recommend that the EBRD issues guidance notes).

The Appropriate Assessment was introduced to the 2022 EIB standards.<sup>11</sup> Unfortunately, EIB treats protected and internationally recognised areas in Europe and outside Europe differently. With the proposed articles we want to avoid these double standards.

During screening, an assessment of the likelihood of potentially significant effects should be done of the plan or project, either alone or in combination with other projects or plans. In determining the likelihood of significant impacts, and hence the need for an appropriate assessment, mitigation measures (i.e. measures to avoid or reduce negative effects) cannot be taken into account. This is confirmed by the European Court of Justice (ECJ) in its ruling in case C-323/17 on Natura 2000 sites in the EU where the Court said that *'in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site'*.

A likelihood of significant effects may arise not only from plans or projects located within a protected site but also from plans or projects located outside a protected site (ECJ case C-142/16, paragraph 29). For example, a hydropower plant located outside of a Natura 2000 site might still have a significant impact on freshwater species inside of the Natura 2000 site, by fragmenting the river and disabling migratory routes for fish.

This includes the consideration of any potential transboundary effects, if a plan or project in one country is likely to have a significant effect on an internationally recognised area in a second country.

An additional change in the EBRD standard is needed – many of the areas are proposed for protection not by governments, but by scientific bodies or international non-governmental organisations (for example, for Key Biodiversity Areas). In these cases, and to avoid destruction of the areas before they are legally protected, the words *'by national governments'* should be erased. A clear example is the Dzhankeldy wind project in Uzbekistan financed by the EBRD and

<sup>11</sup> European Investment Bank, [Environmental and Social Standards](#), 2 February 2022.

other MDBs, half of which is currently being built within the borders of the Kuldzhuktau sanctuary proposed by an UNDP project<sup>12</sup>.

*Footnote 87. Sites identified under international conventions or agreements, including, but not limited to, UNESCO Natural World Heritage Sites, UNESCO Man-and-Biosphere Reserves and the Ramsar List of Wetlands of International Importance.*

The following change should be made:

*'Sites identified under international conventions or agreements **or other areas of international importance in terms of biodiversity conservation using globally standardised criteria**, including, but not limited to, UNESCO Natural World Heritage Sites, UNESCO Man-and-Biosphere Reserves, the Ramsar List of Wetlands of International Importance, **sites protected as part of the Natura 2000 network (including Special Areas of Conservation and Special Protection Areas), international marine protected areas and protected areas beyond national jurisdiction, potential Natura 2000 sites, sites of the Emerald Network, Important Bird and Biodiversity Areas (IBAs), Key Biodiversity Areas (KBAs), Important Plant Areas (IPAs), Prime Butterfly Areas, sites from the Alliance for Zero Extinction (AZE), and others as relevant.'***

The list is more detailed than the existing Policy and in line with the EIB standards.<sup>13</sup>

*Article 13...the client can demonstrate that there are no **technically and economically feasible alternatives**..*

*Article 15...no other **viable alternatives** within the region exist for development of the project in habitats of lesser biodiversity value...*

Footnotes should be added after 'alternatives':

*'The alternatives may consist of a no project option or different:*

- *ways to achieve the objectives of the proposed development;*
- *locations that may be available for the development having regard to protected habitats and species, for example, by defining different land transportation corridors in master plans for roads and motorways or different housing development zones;*
- *scale and size of the development;*
- *design solutions for the development;*
- *techniques, methods of construction or operational methods for the implementation of the development;*
- *timetables (deferrals or compression) of the various activities and tasks at each of the implementation stages, including during construction, operation, maintenance and, if applicable, decommissioning or reconditioning.*

<sup>12</sup> CEE Bankwatch Network, [A False Start for Wind Energy in Uzbekistan?](#), 1 December 2022.

<sup>13</sup> European Investment Bank, [Environmental and Social Standards](#), 2 February 2022.

*The economic cost of the steps that may be considered in the review of alternatives cannot be the sole determining factor in the choice of alternative solutions. The client may not claim that alternatives have not been examined because they would cost too much.'*

Often the alternatives analysis of projects is not done correctly, doesn't consider non-market (biodiversity and ecosystem) value, and doesn't achieve the goals of the standards. For example, for the Bash<sup>14</sup> and Dzhankeledy<sup>15</sup> wind projects in Uzbekistan there were three alternatives (Nurmakhan, Aznek and Uchkuduk), but the final project areas were selected by the Ministry of Energy exclusively due to wind potential, geological factors, existing infrastructure and interconnection to the grid, with no consideration of the environmental risks or impacts. The proposed wording is based on the Methodological guidance by the European Commission on Article 6(3) and (4) of the Habitats Directive 92/43/EEC.<sup>16</sup>

Additionally to the changes in this PR, para 2.8. Section III: Scope should be adjusted as following:

*2.8. EBRD will require its clients to be precautionary in their approach to the protection, conservation, management and sustainable use of living natural resources. Clients are required to ensure that relevant projects include measures to safeguard and, where feasible, enhance ecosystems and the biodiversity they support with the aim of achieving **no net-loss of biodiversity** as well as to sustainably manage and use living natural resources.*

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<sup>14</sup> European Bank for Reconstruction and Development, [Uzbekistan Bash WPP](#), accessed 14 September 2023.

<sup>15</sup> European Bank for Reconstruction and Development, [Uzbekistan Dzhankeledy WPP](#), accessed 14 September 2023.

<sup>16</sup> European Commission, [Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6\(3\) and \(4\) of the Habitats Directive 92/43/EEC](#), 28 September 2021.



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