

The EIB and conflict sensitivity

In the last five years, the lending volume of the European Investment Bank (EIB) in support of projects in and outside the European Union (EU) has steadily increased. While the overall amount of projects signed in 2005 represented € 47 billion, it rose to € 71 billion in 2010. This illustrates the development of the EIB as an increasingly important institutional development actor which has been confirmed by the ECJ ruling in 2008¹.

As the EU's public lending institution, the EIB is bound by EU policy objectives and commitments. Some of these objectives, such as securing EU energy supply and supporting sustainable peace in third countries, may well be competing or even contradicting each other. This raises a number of questions to the EIB and the EU as a whole:

- 1) Is the EIB equipped with the necessary tools, mechanisms and expertise to assess the impact of its lending on conflict, human rights and development?
- 2) How is compliance with EU policy objectives and commitments on conflict prevention, peacebuilding, human rights, development and environmental sustainability ensured in EIB lending?
- 3) How is compliance with EU Member States' responsibility to protect human rights as confirmed in the Ruggie Framework on business and human rights² ensured in EIB lending?

EPLO believes that to address these questions, the EIB's commitments to conflict sensitivity, human rights and development have to be effectively operationalised and become integral and mandatory components of project approval, monitoring and evaluation. As other international financial institutions and international organisations improve their social policies and project guidelines and further refine their due diligence criteria, it is important for the EIB to ensure that it is not falling behind but instead leads the way in upholding the highest standards.

What is the link between EIB lending and conflict?

The links between international financial flows, company operations and conflict dynamics have been amply explored in recent years³. Evidence from many conflict-affected countries shows that investment which is not sensitive to fragile or conflict-affected contexts can exacerbate pre-existing tensions, or even create new ones. The activities typically supported

¹ In 2008, the argument that the purpose of the Community Guarantee for external lending was not development-related brought forward by the Council of the EU and European Commission was rejected by the ECJ.

² Report from the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the Human Rights Council (2008), Protect, Respect and Remedy: a Framework for Business and Human Rights. Available at: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>; and Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (2010), Business and Human Rights: Further steps toward the operationalization of the "protect, respect and remedy" framework. Available at: <http://www.reports-and-materials.org/Ruggie-report-2010.pdf>

³ See for example: (1) Nelson, J. (2000) *The Business of Peace: the Private Sector as a Partner in Conflict Prevention and Resolution* (London, UK: International Alert, International Business Leaders' Forum, Council on Economic Priorities); (2) Ballentine, K. and V. Haufler (2005) *Enabling Economies of Peace: Public Policy for Conflict-Sensitive Business* (New York: UN Global Compact); Collaborative for Development Action, Inc. (3) *Do No Harm/Local Capacities for Peace Project*. www.cdainc.com/dnh/; International Alert (2005) (4) *Conflict-Sensitive Business Practice: Guidance for Extractive Industries* (London, UK: International Alert).

by lending – natural resource extraction, construction of power plants, hydroelectric dams, other large-scale infrastructure projects and lending to emerging businesses – are all relevant in this respect due to the following:

- Revenues from natural resource extraction can create adverse consequences for societies: the phenomenon known as the ‘resource curse’, which has often hastened underdevelopment or conflict.
- Projects that have a large environmental and social ‘footprint’ may require resettlement of communities, or have impacts on groups who are disaffected and feel neglected by their government if the projects’ benefits do not offset the disadvantages it brings.
- Projects often need to protect their assets with security forces.
- Development assistance - through lending or other funding mechanisms - can end up fuelling conflict (by fostering corruption, increasing competition for scarce resources, favouring members of one conflict party over another, and distorting existing economic systems).

Violent conflict constitutes an obstacle to achieving the intended development impact. The absence of a peaceful and secure environment can make development programmes very difficult to implement and widespread violence often reverses hard-won progress. Violent conflicts damages societies by eroding their political institutions - and in particular their ability to maintain or re-establish the rule of law, to protect the lives of civilians, to ensure that governance is possible and to provide basic social services - destroying vital infrastructure, discouraging investments, disrupting social networks, and destroying or depleting natural resources. However, projects which take conflict dynamics into consideration are more likely to have positive impacts on conflict and therefore likely to contribute to sustainable peace.

These risks have been recognised by the EIB, which declares in its Statement on Environmental and Social Principles that ‘the EIB does not finance projects that give rise to conflicts or intensify existing conflicts’ (para 47). The dedication to conflict sensitivity was reiterated in the Mid-Term Review of the EIB External Lending Mandate (p.16 & 18) and the new External Lending Mandate as adopted by the Council of the European Union (preamble point 13). The integration of considerations for conflict in these documents is a very positive step, but the EIB still needs to find a way how to operationalise these commitments more effectively in its lending operations.

What does conflict-sensitive lending mean?

Integrating conflict sensitivity into EIB lending requires the context in which the project will be implemented and the interaction between the intervention and the context to be clearly understood. This understanding needs to be used to avoid negative impacts and maximize positive ones.

In order to allow the EIB to identify and therefore to take steps to ensure that at best they have a positive impact on the conflict context and as a minimum that they do no harm requires that the potential positive and negative impacts of projects on the conflict context and vice-versa are examined in detail. Such conflict sensitivity must continue throughout the entire project cycle of planning, implementation, monitoring and evaluation.

The application of conflict sensitivity principles should not be limited to situations of fragility. In fact, conflict may take differing forms and run through various stages of escalation and de-escalation, resulting from the complex combination and overlap of the various causes of conflict. And even in relatively stable situations, a significant large scale project can have a destabilising effect.

What is the responsibility of EU Member States?

While the project promoter bears the direct risks of operating in a conflict-prone region, the EIB is exposed, given that loan finance has to be re-paid from the revenue stream of the project, and not from the assets of its principals. The EIB's risk - because the loan is specific to the project - goes beyond this purely financial risk as the EIB can be held accountable for supporting a controversial project that has led to conflict.

An emerging body of research and thinking shows that there are clear legal liability risks emanating from company conduct that directly or indirectly contravenes international legal standards applicable in these contexts; these may under certain circumstances extend to project sponsors as identified in the '*red flags*' by International Alert and Fafo AIS⁴. Project sponsors need to be mindful of this potential risk and mitigate it as part of their own due diligence.

In addition, EU Member States' responsibility to protect human rights, as confirmed by the Ruggie framework, obliges them to ensure that the EIB has due diligence mechanisms in place so that projects supported by EIB lending are not in violation of human rights standards.

EPLO believes that the responsibility of the EIB does not stop here, but that the EU's legal obligation to 'promote peace, its values and the well-being of its peoples' (Art. 3.1) and to 'preserve peace, prevent conflicts and strengthen international security' (Art. 21.2(c)) enshrined in the Lisbon Treaty requires the EIB to ensure that the challenging interactions between investment and conflict are addressed and that any adverse impact of investment is minimised.

Recommendations:

1) Develop capacity for conflict impact assessments

The EIB should develop its capacity to assess a project's conflict risks in line with its commitments in the Statement on Environmental and Social Principles and the new External Lending Mandate as adopted by the Council of the European Union. The conflict impact assessment should be part of the overall social and environmental assessment that the EIB is undertaking. While general guides to carrying out conflict assessment, such as the European Commission's check-list for root causes of conflict, could be used for preliminary desk-research, the EIB should consider developing an integrated environmental, conflict and human rights assessment tool similar to the frameworks that are currently being developed for the UNEP and to integrate appropriate conflict criteria into the already existing monitoring mechanism.

Applying conflict sensitivity may require greater human and financial resources, which may reduce once the practice has been 'institutionalised'. More importantly, the costs of failing to take conflict into account are much higher. They include delays in or closing down of projects, waste of resources, and unsustainable or ineffective implementation not to speak of the reputational risks involved. On the contrary, a conflict-sensitive approach to development can serve not only to decrease levels of violent conflict or the potential for violent conflict, but also to increase the effectiveness of the assistance.

2) Give appropriate status to the Statement on Environmental and Social Principles within project approval, monitoring and evaluation

The EIB's dedication to conflict sensitivity is recognised in the Statement on Environmental and Social Principles. To ensure that this commitment is not trumped by other considerations, the Statement should be given appropriate, i.e. binding status in the project approval, monitoring and evaluation process so that projects that do not comply with the standards set out in the Statement are not supported by the EIB.

⁴ The 'red flags' include: forced displacement, engaging abusive security forces or making illicit payments. For more information and background on the research, see www.redflags.info

3) Improve conflict risk management systems of project promoters

To ensure that EIB projects are adequately managed and implemented in a conflict sensitive way, the EIB should ensure that promoters are aware and capable to managing conflict-related risks. Based on its own conflict impact assessment, the EIB should require the promoter to develop mitigation strategies and include commitments to conflict sensitive business practices in the lending contract. Where the capacity of a project promoter is limited, the EIB should support the promoter in developing and implementing mitigation strategies. This may lead to the incorporation of warranties and covenants in loan agreements such as requiring that the project promoter has conducted a project-level risk assessment, and that the sponsor will comply with conflict-sensitive business practices⁵. However, covenants and warranties are meaningful only if the EIB monitors and assesses compliance and is able and willing to withhold disbursements in case of an infringement of these commitments.

4) Strengthen project monitoring and evaluation

To ensure transparency and accountability requirements are fulfilled, the EIB should involve civil society in the ongoing monitoring and evaluation of projects. The World Bank is currently developing interesting initiatives in which civil society organisations are involved in the monitoring and evaluation of projects. Such a civil society oversight mechanism would not only increase accountability of the promoter and transparency of lending but also greatly contribute to the effectiveness of projects as potential risks attached to the implementation of the project are highlighted at an early stage.

⁵ For instance, by demonstrating adherence to the Voluntary Principles on Human Rights and Security and/or by using conflict assessment tools such as those discussed above or equivalent.