

Roundtable discussion on EU investment policy and conflict Wednesday, 27 October 2010

Background:

EPLO and its member organisations (most notably QCEA, International Alert and Saferworld) have been working on the European Investment Bank (EIB) since 2008 with some success, in particular commitments to conflict sensitivity in the Bank's Environmental and Social Standards and in the review of its external lending mandate. EPLO is now exploring the possibility of broadening this line of work to include Europe's international investment policy.

The volume of investment funding, the increasing Europeanisation of investment (i.e. transfer of power from national to European level) and the nature and location of investment mean that there is great scope for the EU to do harm – to fuel and exacerbate conflict – but also to do good – to promote peace – through its investment policy.

Objectives:

The roundtable has the following objectives:

- To inform participants about developments in EU investment and consult with experts on investment and related conflict and human rights risks.
- To exchange views on the different possibilities to increase conflict sensitivity of European investment.
- To inform EPLO's ongoing work on the relation between investment, natural resources and conflict.

Participants:

The roundtable brought together representatives of EU Member States and institutions, civil society, academia, private sector and legal experts working on the European Investment Bank (EIB) and the relation between investment policy and conflict to discuss the current state of affairs regarding EIB investment in third countries and its environmental, human rights and conflict impact as well as the implications of the development of a European investment policy.

Panel discussion:

Ms Catherine Woollard welcomed participants on behalf of EPLO and summarised the objectives of the meeting. The panel consisted of Ms Heidi Hautala, President of the Subcommittee on Human Rights in the European Parliament; Anais Berthier, Lawyer at ClientEarth; Nicholas Hachez, Researcher at the Leuven Centre for Global Governance Studies; Moira Feil, Senior Project Manager at Adelphi Research and Oliver Broad, Security Analyst at BP;

The speakers raised the following points (which are not necessarily the views of EPLO):

The EIB and the Commission proposal for an EU guarantee to the EIB against losses under loans and guarantees for projects outside the European Union:

- The Commission proposal is a good opportunity for the European Parliament (EP) to increase the accountability of the EIB and to ensure the coherence of EIB lending with EU external policy objectives;
- The EIB's lending volume is similar to that of the World Bank, but the EIB is under much less public scrutiny;
- The EIB's standards are less rigorous than those of the EBRD;
- Stricter requirements regarding impact assessment and financial intermediaries have to be put in place and the EP is demanding special oversight for loans to certain countries such as Yemen, Belarus or Libya;
- Ideally, EIB lending could become a vehicle for change outside the EU, by for instance requiring countries that accept EIB loans to accede to the Aarhus Convention;
- The EIB has a considerable leverage over the projects it finances and should use this to insist on the protection of human rights, environmental and social standards and conflict sensitivity;
- Compared to institutions with similar lending volume (such as the World Bank) the EIB is operating with 1/10 of the staff, meaning that there is not enough time and expertise within the EIB to conduct thorough assessments of the impact of the projects it finances.

Access to documents and accountability:

- Conflict sensitive lending entails respect for human rights and the environment as well as transparency and accountability;
- Little transparency and difficulty to obtain documents (framework agreements with third countries, environmental risks assessments etc) makes public scrutiny of the EIB very cumbersome;
- The standing of the EU Ombudsman vis-à-vis the bank should be increased so that cases of maladministration can be considered by the Ombudsman;
- To increase conflict sensitivity and respect for human rights and environmental sustainability, the EIB's organisational culture has to change: e.g. staff incentives should not be the size of a loan;
- For many projects, no environmental impact assessment is carried out as the responsibility for this lies with the promoters;
- NGOs should make use of legal tools to access documents; unfortunately, Commission Regulation 1049/2001 only applies to the EIB when it is exercising its administrative functions, which are not defined; therefore, this provision should be tested;
- The Aarhus Convention applies to the EIB and can be invoked in relation to environmental information which is a very broad term and includes all clauses in EIB contracts that relate to the environment;
- In case that the request for documents is refused, CSOs can refer the case to the General Court, which is the only instance in which CSOs have standing in front of the court.

International investment regime:

- The international investment regime is imbalanced, with rules governing investment in bilateral investment treaties (BITs) focus on protecting the economic interests of investors against expropriation or discrimination;
- Investment arbitration follows commercial dispute settlement mechanism that provides a one-way recourse for investors;
- Developing countries' legal systems are often not strong enough to hold investors to account and the competition between countries to attract foreign direct investment (FDI) often leads to a race to the bottom of social, environmental and human rights standards;

- As largest sender and receiver of FDI, the EU can impact on the way international investment is governed, especially as it is formulating its own investment policy;
- A model EU investment treaty could be designed that would balance rights and obligations between investors and host countries and which would ensure that human rights and environmental and social standards are adequately protected.

Tools for assessing and addressing the relation between the environment, natural resources and conflict:

- Scarcity of resources for EU industries and the push for natural resource extraction is often not accompanied by the necessary conflict sensitivity;
- The EBRD has concluded three framework agreements to provide independent environmental and social due diligence and train financial intermediaries in support of the EBRD's Environmental and Social Policy;
- The African Development Bank is currently revising its environmental safeguards;
- Adelphi has developed an integrated assessment (environment, natural resources and conflict) for the United Nations;
- In the Peacebuilding Partnership, the EU and UN have developed joined guidance notes on strengthening the capacity for consensual and sustainable management of land and natural resources;
- The OECD is conducting a project on due diligence in the mining and minerals sector;
- The Voluntary Principles on Security and Human Rights (VPs) were developed in response to the security situation in Casanare, Colombia;
- Regarding the Baku–Tbilisi–Ceyhan (BTC) pipeline, armed private and public security guards were identified as the main risk and special attention was given to ensure transparency regarding the activity of local security personnel and to provide security guards with human rights training;
- Natural resource extraction projects are so large that several issues have to be taken into considerations: procurement, crisis response etc.

The panel was followed by a Q&A and discussion session, in which participants raised the following issues:

- The Commission is invited to give an opinion before EIB projects are approved; however, Commission officials receive too little information to be able to judge the environmental, human rights and conflict impact of a project and are not legally obliged to give an opinion;
- A model investment agreement has been drafted in the USA and Canada, which is partly due to the fact that there is an investment chapter inside the NAFTA and because the USA and Canada themselves have been subject to a considerable amount of investment arbitration;
- Drafting a model investment agreements is difficult since the gap between the economic interests of investors and considerations for human rights, environment and conflict sensitivity are hard to breach;
- Working on EU investment policy, one should keep in mind which policies are in the driving seat and which are most likely sidelined (e.g. human rights, conflict sensitivity etc).

EPLO MEMBERS

Berghof Research Center for Constructive Conflict Management

Civil Society Conflict Prevention Network—KATU

Conciliation Resources

Crisis Management Initiative—CMI

European Network for Civil Peace Services—EN.CPS

European Centre for Conflict Prevention—ECCP

ESSEC Iréné

Fractal

Fundación para las Relaciones Internacionales y el Diálogo Exterior—FRIDE

German Platform for Peaceful Conflict Management

Glencree Centre for Peacebuilding and Reconciliation

International Alert

International Center for Transitional Justice—ICTJ

International Crisis Group

Interpeace

Kvinna till Kvinna

Life and Peace Institute

Nansen Dialogue Network

NGO Support Centre

Nonviolent Peaceforce

Partners for Democratic Change International—PDCI

Pax Christi International

Quaker Council for European Affairs—QCEA

Saferworld

Search for Common Ground

Swisspeace

Toledo International Centre for Peace—CITpax

World Vision

THE EUROPEAN PEACEBUILDING LIAISON OFFICE EPLO

EPLO is the platform of European NGOs, networks of NGOs and think tanks active in the field of peacebuilding, who share an interest in promoting sustainable peacebuilding policies among decision-makers in the European Union.

EPLO aims to influence the EU so it promotes and implements measures that lead to sustainable peace between states and within states and peoples, and that transform and resolve conflicts non-violently. EPLO wants the EU to recognise the crucial connection between peacebuilding, the eradication of poverty, and sustainable development world wide and the crucial role NGOs have to play in sustainable EU efforts for peacebuilding, conflict prevention, and crisis management.

EPLO advances the interests of its members through common policy positions and consequently advocating for those common positions. EPLO disseminates information and promotes understanding of EU policies of concern to its Members. The Office builds also solidarity and cooperation amongst its members and with other relevant NGO networks. Finally, EPLO raises awareness about the contribution the EU should make to peacebuilding and the need to hold the EU accountable to its own political commitments of helping secure peace within and outside its borders.

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