

EPLO (European Peacebuilding Liaison Office) welcomes the European Investment Bank's (EIB) initiative of a public consultation on the draft revised EIB Statement of Environmental and Social Principles and Standards and would like to make some comments as well as suggest some changes in the draft document.

EPLO's contribution to this consultation is made from the perspective of a commitment to peacebuilding and the development of conflict resilient societies able to live together and solve problems within generally accepted democratic frameworks and, most importantly, without resorting to violence.

EPLO believes that, as a peace project itself, the European Union is unique, and it is important that all of its institutions promote the peacebuilding model which the EU has established successfully within its borders. That is not to say that there are no conflicts within the EU and it is not to say that social standards, and particularly those which contribute to justice and peace, should not also be at the forefront of the thinking when investments are made within the EU.

This submission is divided into two sections. The first is more general and focuses on conflict sensitivity and on the need of including reference to this aspect in the Statement. In particular, it calls for the inclusion in the Statement of a separate section on conflict sensitivity, making clear reference to the need for conflict analysis. Furthermore, it calls for the inclusion in the Statement of clear reference to the protection of human rights, because violations of human rights are both a root cause and a consequence of violent conflict. The second one goes more into details and contains specific comments to relevant paragraphs of the Statement.

### **Conflict Sensitivity**

EPLO is concerned that there is very little reference to conflict in the draft document and that *there is no specific section dealing with conflict sensitivity*.

We would like to highlight the importance of applying principles of *conflict sensitivity* to the assessment and appraisal of any project put forward for funding by the EIB.

Investment in development projects, even well-intentioned, can inadvertently cause conflict and their outcomes can be limited or counterproductive by the fact that they do not pay sufficient attention to conflict dynamics. In order to overcome this risk and maximize impact on stability, it is essential to integrate conflict sensitivity within the different stages of the decision making processes, as well as programming, implementation and evaluation of a project.

Integrating conflict sensitivity into programming implies understanding the context in which the project will be implemented, the interaction between the intervention and the context, and most importantly, the use of this understanding to avoid negative impacts and maximize positive ones. Applying conflict sensitivity requires carrying out conflict analysis which should have equal priority to other forms of assessment<sup>1</sup>. Conflict analysis should be aimed at assessing whether and how the implementation of a project could exacerbate violent conflict and the steps that can be taken to mitigate and/or eliminate the root causes of conflict. In carrying out conflict analysis, reference should be made to the EC Checklist on the Root Causes of Conflict<sup>2</sup>. In particular, the criteria listed in the new proposed paragraph 41 (see below) should be followed.

The list of issues set out in paragraph 144 of the section B5 (Social Assessment) of the “Handbook” is also a useful checklist for conflict analysis. However, it should still be supplemented by reference to the EC Checklist on Root Cause of Conflict.

EPLO therefore suggests the inclusion in the Statement of **a separate section on conflict sensitivity** which makes clear reference to the need for such a conflict analysis.

We would propose that such a section could be included in the statement between the current paragraphs 40 and 41 and could read as follows:

Heading: Conflict Sensitivity

**41 (new paragraph):** The European Union, both in the context of the Cotonou Agreement (Article 11) and the EU Programme for the Prevention of Violent Conflicts <sup>3</sup> has committed itself to the mainstreaming of conflict prevention (and therefore, by implication to conflict sensitivity of its actions) both in the delivery of development assistance and in the implementation of all its policies. The EIB aims to apply both the spirit and the letter of these commitments and therefore requires a conflict analysis for all projects which will make reference to the EC Checklist on the Root Causes of Conflict. In particular, it should identify whether:

- The project might make a positive contribution to conflict transformation
- The project might affect the conflict by inadvertent support/lack of support to one or other party to the conflict

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<sup>1</sup> “Conflict sensitivity is an approach that runs through the entire cycle of planning, implementing, monitoring and evaluating activities” see *Conflict-sensitive Development*, Saferworld Briefing, May 2008 at [http://www.saferworld.org.uk/publications.php/313/conflict\\_sensitive\\_development](http://www.saferworld.org.uk/publications.php/313/conflict_sensitive_development) “Conflict analysis is (...) a central component of conflict-sensitive practice, as it provides the foundation to inform conflict sensitive programming, in particular in terms of an understanding of the interaction between the intervention and the context” see *Conflict Sensitive Approaches to Development, Humanitarian Assistance and Peacebuilding-A Resource Pack*, Africa Peace Forum, Centre for Conflict Resolution, Consortium of Humanitarian Agencies, Forum on Early Warning and Early Response, International Alert, Saferworld, 2004 at <http://www.conflictsensitivity.org/node/98>

<sup>2</sup> European Commission (EC) Checklist on the Root Causes of Conflict, 2001 at [http://ec.europa.eu/external\\_relations/cfsp/cpcm/cp/list.htm](http://ec.europa.eu/external_relations/cfsp/cpcm/cp/list.htm)

<sup>3</sup> EU Programme for the Prevention of Violent Conflicts was adopted at the European Council in Göteborg, June 2001 at <http://www.eplo.org/documents/EUprogrammePreventionViolentConflicts2001.pdf> see also Commission Communication on Conflict Prevention COM (2001), at [http://ec.europa.eu/external\\_relations/cfsp/news/com2001\\_211\\_en.pdf](http://ec.europa.eu/external_relations/cfsp/news/com2001_211_en.pdf)

- The project will not undermine human rights in affected regions, and is consistent with generally-accepted codes of conduct, such as the OECD Guidelines for Multinational Enterprises<sup>4</sup>, the UN Global Compact<sup>5</sup>, and complies with international and national laws.
- The project is investing in activities or commodities which fuel the conflict
- The project removes control over domestic (i.e. national) issues from citizens (by giving control of key resources/land/infrastructure to foreign investors).
- The project undermines the legitimate role of local communities over decisions that affect them, and where it does exercise external control, or distribution of resources outside the immediate environment, it should be after consultation with affected stakeholders.

The conflict assessment will also cover the issues as set out in paragraph 144 of the EIB's handbook.

## Human Rights

The lack of respect, protection and fulfillment of human rights often acts as a conflict driver.

Despite EIB's commitments to EU human rights policies the EIB currently still does not seem to have any effective process in place to ensure that it is not financing projects that will cause human rights abuses. Furthermore, the EIB lacks an independent mechanism allowing people whose rights have been negatively affected to present complaints and access redress, although we are aware that negotiations on a Memorandum of Understanding between the EIB and the European Ombudsman are ongoing.

EPLO believes the Draft Statement should include clear reference to the protection of human rights. The EIB should ensure that it does not support projects which could contribute to or benefit from human rights violations.

We would propose to include clear reference to the protection of human rights in the section on social standards.

## Specific comments

### **Comments on "Preamble"**

**Point 3:** In this section, it would be useful to consider the definitions of 'significant' and 'substantially' and to define appropriate criteria.

**Point 4:** The phrase: 'harm human beings' is too broad and would benefit significantly from being fleshed out. Reference to the points made in paragraph 144 of the Handbook would be a start. Seen through a conflict lens, the potential for differential impact on population groups can also be

<sup>4</sup> OECD Guidelines for Multinational Enterprises at <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

<sup>5</sup> Ten Principle of the UN Global Compact at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

'doing harm' even if this is not immediately evident. For example, if a water project improves the access to clean and safe water for a community, this is 'doing good'; but if the same project diverts water resources from another community, this is 'doing harm'. Whilst this is a crude example, the underlying thinking and analysis needs to take place in detail in project assessment.

**Point 4:** Similarly, the phrase: 'ethically or morally controversial' is too broad and one way of handling this issue is to make cast it in a more objective framework, such as a project consistent with international and national laws, and respecting human rights. Clearly, it would be difficult to list the type of projects or activities which would fall into this category. However, if the Bank accepted the need for a **conflict analysis** in the evaluation of each project, the question of whether it is ethically or morally controversial could then be integrated into this. The terms ethics and morality are subjective, and as EIB's projects include investing in cultures that may be substantially different from European values, a more universal definition would be more helpful. The issue is not whether it is judged against some abstract notion of ethical or moral acceptability but rather its fit with the values and standards of the European Union. Where there is a conflict between those values (either between the EU and the local perception or between different perceptions locally of what is ethically and morally acceptable) then the issue becomes one of consultation, participation in decision making, ensuring key stakeholders are involved and making sure that everyone concerned can live with the decisions once made, and those decisions should be consistent with international human rights standards.

**Point 5:** The requirements for reporting seem to be rather vague. The EIB should consider formulating clear guidelines on reporting particularly with respect to regularity, content and evaluation criteria.

#### **Comments on "Maximising Benefits"**

We would suggest that in this section, two new paragraphs are added in an appropriate position as follows;

**New paragraph:** The Bank finances projects in developing countries where there is clear evidence that the project will contribute to the achievement of development objectives.

**New paragraph:** The Bank finances projects in third countries affected by or prone to violent conflict only if it can be demonstrated that the project is designed in a conflict sensitive way and not contribute to violent conflict and ultimately contribute to the reduction in tension and to the increase in conflict resilience of local society.

#### **Comments on "Principles"**

We would suggest that the introductory phrase 'As an EU body' in paragraph 21 weakens this statement in comparison to the 7 foregoing paragraphs relating to environmental issues. We recommend that the beginning of this point is rephrased as follows: 'The EIB is committed to...'

We would suggest that in this section, new paragraphs should be added as follows:

**New paragraph:** The EIB is committed to ensuring that all the projects it finances in developing countries contribute to development objectives.

**New paragraph:** The EIB will apply a precautionary and prevention principle also to issues of conflict when considering projects in third countries, i.e. it will not fund projects which cannot demonstrate a positive (or at least neutral) impact on any conflict or potential conflict in the location of the project.

**New paragraph:** The EIB will, in principle, require any project it funds to meet international human rights standards.

### **Comments on “Standards”**

As a general comment, the document is very much focused on environmental standards and does not adequately address social standards. The two sections should be better balanced, and the one focused on social standards should also include a clear reference to the protection of human rights.

### **Comments on “Environmental Standards”**

EPLO does not aim to comment in detail on this section of the document because this is not our primary area of expertise.

The exception to this is **paragraph 23, point 3**: here, the EIB requires projects to comply with all international conventions which the host country has ratified but makes no reference to conventions which the EU (but not the host country) has ratified. We would argue that the EU (and thus the EIB) should consider itself bound by international conventions it has ratified wherever it acts. This comment should apply equally to any international conventions on social, human rights and conflict prevention standards.

### **Comments on “Social Standards”**

**Paragraph 40:** Whilst we understand the reasoning, we regret that the social standards only apply outside of the EU. This, once again, shows the lack of coherence between external and internal EU policies. The EU and the Bank should be willing to subject its activity within the EU to the same criteria as outside.

**Paragraph 40, point 1:** The reference to ‘livelihood’ and ‘displacement’ is too narrow. There should also be reference to the affected populations being consulted and having to agree to the restoration/compensation packages and/or the resettlement plans. Improper compensation can actually cause or aggravate conflict.

**Paragraph 40, point 2:** The impact on the rights (not only to land) of all people and groups (including but not exclusively Indigenous Peoples because many other groups require special consideration) should be taken into account. The EIB should ensure that the projects it finances do not lead to human rights abuses, directly or indirectly. Indeed, EIB investments should be consistent with EU human rights responsibilities. In this respect, the EIB should put in place independent mechanisms allowing people whose rights have been negatively affected to present complaints and access redress.

The term “significantly affected” is rather vague and it should be better defined.

**Paragraph 40, point 3:** The reference to the adherence to ILO standards is welcome and its core conventions should be honored. The safeguards should apply to subcontractors as well. Care should be taken to avoid corruption and criminalization, both of which could act as conflict drivers.

**Paragraph 40, point 5:** Again, the reference to 'livelihoods' is too narrow. Both here and in the first point of the paragraph this needs to be widened to include:

- The socio-economic context
- Access to essential services for the realization of human rights
- Access to participation in decision-making

### **Comments on “Cultural Heritage” and “Biological Diversity”**

**Paragraph 42, point 1 and Paragraph 44 point 1:** Both sections reference making exceptions to principles if no other “feasible alternative” can be found. This implies that certain environmental and social principles can be violated if a subjective assessment is made that there are no feasible alternatives. Choosing *not* to pursue a project is *always* a feasible alternative, and the Bank is far too cautious in rejecting projects altogether on the basis of social and environmental principles. This document could be an opportunity to explore the criteria through which the Bank can reject inadequate projects allowing the Bank more flexibility in specific investment decisions.

We would recommend **deleting** these two points (in both 42 and 44) as a minimum; this would leave it open to the bank to not approve a loan where principles of this statement cannot be observed in a ‘feasible’ way.

**Paragraph 42, point 3:** There should be reference to a requirement for such restoration measures to be agreed with affected populations.

**Paragraph 44, point 3:** The use of the word “adequate” implies a subjective valuation of mitigation and compensation measures. It is important to specify who makes the judgment that measures are indeed adequate. This would involve consultation with all stakeholders affected by the action to reach a consensus on what is actually adequate.

**Paragraph 45:** Particularly in conflict areas the definition of the ‘overriding national interest’ may well be part of the conflict or part of the root causes of conflict. In such circumstances, and where it has been established that there is not a generally accepted definition of this term, this criteria should not be applied.

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International Alert  
International Center for Transitional  
Justice—ICTJ  
International Crisis Group  
International Security Information Service  
- ISIS Europe  
Interpeace  
Kvinna till Kvinna  
Life and Peace Institute  
Nansen Dialogue Network  
Nonviolent Peaceforce  
Partners for Democratic Change  
International—PDCI  
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Quaker Council for European Affairs—  
QCEA  
Saferworld  
Search for Common Ground  
Swisspeace  
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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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