

CEE Bankwatch Network Input

I. Introduction, including summary of the main issues

In many financial institutions client countries, human rights, in particular freedom of expression, assembly, and association are under attack, from violent crackdowns on protests and criminalization of speech, to arbitrary arrests and detention of human rights defenders, as well as restrictions on civil society organizations (CSOs). As reported by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the very notion of human rights is under increasing attack in many parts of the world and the space for civil society has been effectively closed down by many governments. The banks are active in many countries considered either 'hybrid regimes' or purely 'authoritarian', or in countries where political rights and civil liberties are highly limited. In a context of violence, intimidation and shrinking or closing space for civil society, the banks' financing may be at risk of not complying with the standards of public participation and free consultations and may easily be associated with, contribute to, or exacerbate human rights violations. Our report suggests that European Investment Bank and Asian Infrastructure Investment Bank are not ready to protect human rights and lack of concrete policy solutions and codes of conduct.

I. European Investment Bank

1. Policy framework¹

The European Investment Bank, the bank of the European Union, owned by 28 EU member states, is the biggest multilateral lender by volume in the world. Even if its primary zone of operations is Europe, the EIB is also active outside of the EU, investing in projects that aim to promote sustainable and inclusive growth in support of the EU's external policy objectives. EIB operations outside the EU constitute around 10% of the bank's lending.

The EIB has been established under the Treaty of Rome and its latest Statute has been adopted under the Treaty of Lisbon. EIB operations outside Europe are based either on a mandate from the European Union, with an EU Guarantee under Decision No 466/2014/EU (the so-called External Lending Mandate, ELM), or at its own risk under dedicated facilities managed by the EIB. In addition, the EIB manages the ACP-EU Investment Facility as agreed by the EU member states and countries in the Africa, Caribbean and Pacific region under the Cotonou Agreement establishing the European Development Fund (EDF).

¹ a robust legal framework that is compliant with international standards as well as a strong national human rights protection system that safeguards public freedoms and ensures effective access to justice (i.e. rules/regsto carry out work)

EU external action as set out

EIB's operations are the EU's external action and in line with the Article 21 TEU (The Lisbon Treaty), shall be guided by "the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law."

The EU has ratified Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Therefore its institutions and bodies are subject to this Convention.

EIB has developed internal policies in the form of standards and procedures transposing the EU law it is binded to:

- Transparency Policy describes EIB procedures concerning information requests from the public, the information that the EIB makes routinely available to the public as well as stakeholders engagement and public consultations. This policy is available in 21 languages²;
- The EIB Statement of Environmental and Social Principles and Standards. In all other (than EU and Enlargement Countries) regions of EIB operations, the approach of the EIB to social matters is based on the rights-based approach mainstreaming the principles of human rights law into practices through the application of its Social Assessment Guidelines³.
- Complaints Mechanism Policy - describes principle and procedures for handling of complaints lodged at the EIB concerning maladministration. Anyone can lodge a complaint concerning actions or omissions of the Bank⁴.

However these internal policies have serious flaws preventing civil society organisations, persons affected by EIB's projects, human rights defenders from advantaging their rights and holding the institution accountable for operations it finances.

2. Bank response to political environment⁵

In the context of the EIB this is important to analyse whether the bank, as an institution of the European Union, when financing projects in the interest of the EU and in support of its policies, promote and ensure environment which is conducive to civil society work, by supporting public freedoms, enabling public participation, issues political messages enhancing civil society and condemning any form of retaliation as well as acknowledge and listen to contributions from the society.

² <http://www.eib.org/infocentre/publications/all/eib-group-transparency-policy.htm>

³ <http://www.eib.org/infocentre/publications/all/environmental-and-social-principles-and-standards.htm>

⁴ <http://www.eib.org/infocentre/publications/all/complaints-mechanism-policy.htm>

⁵ a political environment conducive to civil society work (e.g. leadership, society demonstrates they value CS contributions)

The bank is active in many countries considered either 'hybrid regimes' or purely 'authoritarian', or in countries where political rights and civil liberties are highly limited. In a context of violence, intimidation and shrinking or closing space for civil society, the bank's financing may be at risk of not complying with the standards of public participation and free consultations and may easily be associated with, contribute to, or exacerbate human rights violations.

A proper response to the needs of civil society require a solid analysis and understanding of the civil environment in which the bank operates. In 2012 a study by two Belgian academics presents a critical analysis ⁶ of the EIB's approach to human rights issues and underlines the need for a comprehensive human rights policy at the bank. The study states that "(...) the EIB's principles, standards and operational policies do not constitute a firm substantive accountability framework containing clear-cut performance standards which the EIB binds itself to apply in relation to all projects it finances. Rather, they look like an indicative list of potentially relevant elements which the EIB will consider in making its finance decisions. Human rights considerations are weakly embedded into the EIB's appraisal and monitoring process, as human rights impact assessments are not mainstreamed in practice. A credible EIB human rights policy could however make a significant difference, e.g. for human rights in business."

The existing EIB due diligence does not consider the social situation in a country related to the state of human rights and does not properly assess potential risks to human rights in relation to project realisation. Moreover, it does not propose mitigation measures or relevant finance contract clauses.

The project appraisal process does not include human rights due diligence which would assess the realisation of the rights to freedom of expression, assembly and association. The social appraisal process is often limited to public participation in projects impacting environment and resettlement processes if applicable, which reflects the narrow scope of the EIB's project appraisal process. They lack an overview of the broader social impacts of projects, e.g. gender issues, poverty alleviation or human rights. Currently it lacks rules and mechanisms aiming to prevent the negative impact on human rights, to ensure projects contribute to the enhancement and realisation of human rights, and to provide remedies in case of human rights violations. In a consequence the EIB consider itself as a financier whose role is to oblige the project promoter to implement rules on access to information, public participation and environmental and social standards, including the respect to human rights. EIB itself does not play an active role in these processes.

Example: EIB loan for rolling-out fixed broadband telecommunication in Turkey: In recent years, the Turkish government has adopted law amendments that restrain internet freedoms and expand online censorship and surveillance. The government has

⁶ A responsible lender? The European Investment Bank's Environmental, Social and Human Rights Accountability', Nicolas Hachez, Jan Wouters, July 2012

been actively blocking websites and prosecuting social media Users. In this context, the EIB decided to provide a loan for rolling-out fixed broadband telecommunication services in six eastern regions of Turkey. Therefore, CEE Bankwatch Network requested the EIB to explain its due diligence to prevent directly or indirectly supporting violations of the rights to privacy or freedom of expression through censorship, surveillance or network shutdowns. publicly and privately with Turkish government officials concerns about censorship, surveillance, and network shutdowns and related human rights violations, and if it took steps to influence the legal and regulatory reforms to safeguard privacy and freedom of expression in Turkey. The bank replied that Turk Telekom was a private company with a minority stake held by the Turkish government which had no influence in the management of the company and its investment plans on an existing open market in which companies have no influence on the government decisions that are applied through the Telecommunication Authority. The EIB concluded that, as the EU financial institution, it was not in its role or mandate to comment on decisions taken by the government of a partner country and such issues would fall under the responsibility of other EU institutions which also approve the mandates under which the EIB operates outside the EU.

3. Access to information⁷

Having extensively monitored EIB operations in recent years, our assessment is that the EIB fails to fully comply with its obligations under the EU Treaty, EU legislation on access to information, the ELM Decision and its own Transparency Policy.

Indeed, there are many documents related to the environmental, social and development impacts of its operations that the EIB does not publish: Result Measurement Sheets (so-called ReM sheets); Environmental and Social Appraisal Forms; Project Completion Reports; Project monitoring reports; Project evaluations.

Although the bank should require project promoters to carry out thorough monitoring during project implementation until completion on, inter alia, economic, development, social, environmental and human rights impacts, it does not make this information publicly available. The public lacks information about how EIB financed projects are implemented, including information related to environmental and social obligations placed on project promoters. Project specific webpages are not regularly updated to reflect the status of projects (eg, 'under implementation', 'completed').

The other issue which deserves more attention from the EIB is its visibility in recipient countries, in particular the visibility of its financing to certain projects. This problem has already been raised by the Court of Auditors in its report on the added value of the ACP

⁷ avenues for participation by civil society in decision-making processes (e.g. seat at the decision-making table)

Investment Facility⁸ and in the Diagnosis Report of PwC for the External Lending Mandate 2014-2020⁹. This issue is of particular importance for ensuring that people impacted by projects can effectively execute their rights as provided for by the EIB's environmental and social principles and standards, as well as the EU's high level objectives for external action, including their right to appeal to the EIB complaints office and the European Ombudsman. In this context, the issue of visibility is also a matter of accountability for the EIB. In parallel, the implementation of the Aarhus Convention, which the EU is a party to, requires transparency, especially the active dissemination of information to ensure access to environmental information, public participation in environmental decision making and access to justice in environmental matters.

In practice, the EIB does not disclose its own project related documents before approval of the loan. On a project level it requires the promoter to disclose information however it does not require any specific form of such disclosure what results in significant variations between EIB financed projects. For example in case of a loan to MHP company in Ukraine, although Ukrainian legislation concerning access to environmental information and public participation is not in compliance with Aarhus Convention or the EU standards, the EIB found disclosure of information and the process of public consultations in line with its standards. In case of this project, full environmental documentation was not available from any public authority. Such provisions for information disclosure are not present in Ukrainian legislation. The EIB reported that MHP organised one public hearing on its project in Ladyzhyn to discuss the construction and operation of an integrated chicken fodder production complex and it published the notification of assessment results in two regional newspapers, however such practice cannot be considered as real public consultation within the decision-making process as required by the EIB standards.

4. Avenues for participation¹⁰

On the level of project financed, EIB does not conduct public consultations and does not involve civil society in decision-making process within the bank. Projects are approved by the Board of Directors which is non-resident and thus unavailable for discussions on individual investments. The bank has established CSO unit which accepts communication sent to the bank, acknowledges letters received and facilitates answers.

The bank policies require public consultations for projects which are subject to environmental impact assessment, in line with the relevant EU legislation. Such public consultations or other form of involvement of the civil society in the decision-making process are not required by the bank for other type of projects. The bank itself is not a part to such consultations. Its policies do not require any specific form of such

⁸ The ACP Investment Facility: does it provide added value?', European Court of Auditors, 2015

⁹ Evaluation of the External Lending Mandate 2014-2020, Diagnosis report', PwC, May 2016

¹⁰ avenues for participation by civil society in decision-making processes (e.g. seat at the decision-making table)

consultations or public participation which would ensure freedom of expressions. Also it does not provide for any specific measures in case a country systems do not guarantee the freedoms of expression, association and peaceful assembly and the right to participate in public affairs. Therefore the practices vary from project to project and depend on such factors as national legislation and the project promoter capacities.

Recently, in regards the bank due diligence for TANAP project in Turkey we have been pointing to the fact that in Turkey the situation for civil society, freedom of speech and independence of media deteriorated massively throughout the year whereas TANAP project documents do not include any analysis of the impact of the imposition of martial law and do not reflect the current and rapidly evolving conditions in Turkey. Currently there is no possibility for civil society's scrutiny and monitoring of the project. The EIB has not provided indications so far that the project in Turkey adheres to its standards, whereas the appraisal process and its outcome remain confidential before approval.

According to EIB's policies the project promoter is fully responsible for public consultations. Such provisions do not seem to be in line with the applicable legislation, such as Aarhus Convention as well as the EU regulations concerning public participation in decision-making processes. Public participation in decision-making process may not be limited to organisation of a public hearing with information about planned investment but must provide a real opportunity for the civil society to express opinion at the stage when all options are still possible. As decisions about whether allow certain project or not is taken always by the relevant authority public participation must be allowed within such decision-making process. Requiring to conduct public consultation by the project promoter itself who has no competence in terms of issuing development consent for its project may not be considered as real avenue for participation of civil society and project affected persons in decision-making.

There is no codified practice for the EIB to provide advice in cases of threats, intimidation or reprisals occurring in connections with projects financed. CEE Bankwatch Network has witnessed threats and intimidation directed towards project affected person in relation to two investments financed by the EIB in Kenya. In both cases we have called the bank to undertake actions against intimidation however we have not been provided with information about the steps eventually undertaken by the bank.

On institutional level there is more opportunities for civil society to involve in a dialog with the EIB. It conducts reviews of its policies, welcoming input from the public, organises consultation meetings and give answers to presented inputs. It also organises seminars or workshops on dedicated issues. Interested organisations may also ask for the working meetings or teleconferences. There is annual seminar for CSO organised at the EIB's headquarter, usually in February each year which is an occasion to meet the bank's staff and representatives of its governing bodies.

5. **Support and resources** for civil society¹¹

EIB as an investment bank does not support civil society, it is considered to be a role of the European Commission.

III. Recommendations for EIB

- Cooperate with the EEAS and the European Commission, in particular under the existing frameworks such as the EU Action Plan for Human Rights and Democracy, the EU Country Roadmaps for engagement with Civil Society, and the EU country strategies for human rights and democracy 2016-2020 (developed and coordinated by the EU delegations and EEAS); as a way to improve capacities to analyze the environment for freedoms of expression, assembly, and association, and the realization of other human rights critical to development and projects' implementation; as well as including identifying mitigation measures that can be undertaken to prevent human rights violations and address any risks.
- Adopt a Human Rights Action Plan to implement the objectives of the EU Strategic Framework on Human Rights and Democracy and the EU Action Plan for Human Rights and Democracy. At the end, the human rights action plan should provide the rules and mechanisms aiming to prevent the negative impact on human rights, to ensure projects contribute to the enhancement and realisation of human rights, and to provide remedies in case of human rights violations. Its preparation and drafting should be done with the participation of civil society organisations.
- Ensure that Free Prior Informed Consent is a requirement for all land and natural resource based investments across the EIB's operations. This must include recognition that there can be no responsible investment in large-scale agricultural projects in contexts where communities do not have the right to express freely and assert their opposition to projects affecting their lands.
- Throughout the project cycle, take all necessary measures to mitigate risks of all forms of threats, attacks, or reprisals to community members, workers, activists, journalists, human rights defenders, and civil society organizations for participating in project development, for criticizing or opposing a project or otherwise speaking out (or being perceived to have spoken out) against a project. Such measures should include: incorporating clauses preventing reprisals in loan agreements and developing an urgent response system to address threats to project critics.
- Concerning compliance/accountability mechanisms: develop measures to protect people's right to an effective remedy, including the right to freely approach and fully participate in the bank's accountability mechanism processes; ensure that

¹¹ Long-term support and resources for civil society (resources, capacity/skills building)

those communities likely to be affected by a project are aware of and feel safe in approaching the EIB complaints mechanism; give complaints mechanism the tools and power to address situations in which complainants experience retaliation after participating in or attempting to lodge a complaint.

- the EIB should publish the results, evaluations and impact appraisals of projects on a systematic basis via the publication of all environmental and social appraisal forms and reports, including Result Measurement Framework sheets, monitoring reports and project completion reports as a source of information on the implementation and impacts of projects;
- in order to improve visibility on the ground, project promoters should be obliged to inform other stakeholders about the EIB's involvement during public consultations, through information being made available in local media and other appropriate means of disseminating information, already at the stage of project appraisal – once the project enters the EIB's pipeline.

Asian Infrastructure Investment Bank

1. Policy framework¹²

Such policy framework does not exist and the Bank has expressed an intention to keep a "fast and nimble project cycle" and forgo the bureaucracies that have slowed down IFIs lendings (Yukon Huang, "China has a role to play in setting the 'right' standards," Financial Times, April 8, 2015.)

2. Access to information¹³

While the AIIB has an interim public information policy in place since last January, the bank has refused in most occasions to respond substantively to inquiries raised by CSOs with respect to public consultation, project information and policy revision. This is partly due to the fact the interim policy does not have clear time-bound requirements for disclosure or access when approached by CSOs. Last year the bank approved two major and controversial energy infrastructure projects over virtual board meetings without indicating publicly when the board meeting and subsequent project decisions would be held. At the same time, project documents have not been readily available in a manner accessible for project affected communities and CSOs in-country where the operation is.

3. Avenues for participation¹⁴

¹² a robust legal framework that is compliant with international standards as well as a strong national human rights protection system that safeguards public freedoms and ensures effective access to justice (i.e. rules/reg to carry out work)

¹³ avenues for participation by civil society in decision-making processes (e.g. seat at the decision-making table)

¹⁴ avenues for participation by civil society in decision-making processes (e.g. seat at the decision-making table)

Citing the foreign and domestic NGO registration laws, advocacy at the bank's HQ in China is more or less off-limits to. At the same time, most CSOs especially those working with project affected communities in countries where AIIB finances large scale infrastructure projects have not been about to access its non-resident board or the management to bring key policy and project concerns to the decision making process. Back in 2016 in the leadup to the bank's first annual meeting hosted Beijing, joint CSOs request for CSO dialogues with the president, management, and the Board were denied. In addition, many NGOs - both domestic and international - experienced registration hinderance and were subject to additional security screenings due to the Chinese context, which is unheard of in the other IFIs. In terms of responding to inquiries and concerns issued by CSOs, the bank has forgone the establishing a CSO unit; instead, it allocates its PR and communications staff in engaging with CSOs to improve the brand of the bank (email available upon request) but the bank has failed to respond to concerns raised by CSOs in writing in most instances. Out of the fear of reprisals in recipient countries where Chinese state interests have been coupled with major energy infrastructure projects in their countries, CSOs monitoring IFI policies and AIIB projects with an anticipated massive resettlements once projects are implemented have chosen a 'non-engagement' approach, as opposed to their readiness to engage with the ADB and other IFIs.