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Amnesty International comments on the second draft of the European
Investment Bank (EIB) Statement of Environmental and Social Principles
and Standards

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Introduction

Amnesty International welcomes the EIB's second round of public consultation on its Statement of Environmental and Social Principles and Standards, and is encouraged by the positive amendments in relation to human rights in the second draft of the document. However, there remain some critical gaps in the way the Statement addresses human rights, which we outline below.

This review offers an important opportunity for the EIB to ensure that its principles and standards explicitly recognise the founding principle of the European Union (EU) to respect human rights.¹ Moreover it is an opportunity for the EIB to demonstrate leadership in promoting a culture of respect for human rights throughout its investment and lending chain.

In relation to the external mandate, the EIB plays an increasingly important role in the implementation of EU aid; therefore, the EIB's principles and operations should be fully consistent with the EU's commitment to place human rights at the core of sustainable development². The establishment of effective accountability mechanisms is critical if European aspirational objectives in relation to poverty alleviation and sustainable development are to be met.

In order to achieve this, the EIB should recognise its human rights responsibilities and take appropriate action to ensure that the projects it funds or invests in do not have a negative impact on human rights.

1. Ensure that respect for human rights is explicitly recognized in the EIB Statement of Environmental and Social Principles and Standards

Amnesty International notes the improvement in the second draft Statement with regard to explicit references to human rights in the sections dealing with social principles and standards. However, despite these amendments there is still no consistent inclusion of respect for human rights as an essential criterion for EIB funding. This is underscored by the absence of a reference to the human rights policies of the EU in the list of the EU policy objectives that the EIB pursue promoting projects. (§9)

Amnesty International welcomes the restriction of the EIB financing to projects that comply with its social standards and in particular that support and respect international human rights (§44 and 47). However we urge the EIB to include an explicit reference to the international

¹ « The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States» Article 6, Consolidated Treaty of the European Union.

² The « European Consensus » (document 2006/C 46/01) that defines the framework of common principles within which the EU and its Member States will each implement their development policies in a spirit of complementarity, places human rights at the core of the strategies for sustainable development. It also affirms that « The EIB is playing an increasingly important role in the implementation of Community aid, through investments in private and public enterprises in developing countries» (point 119)

human rights law and standards. An end note stating the human rights instruments to which the EIB refers should be included.

Amnesty International is also concerned that, for projects outside of the EU, the responsibility for complying with the EIB's environmental and social standards (which should include explicit reference to the full spectrum of human rights) lies *solely* with the project promoter (§28).

While the host country has clear obligations under international human rights law, and the project promoter has responsibilities in respect of a project's impacts, the responsibilities of the EIB as funder - in terms of the impact on human rights of projects that it funds - should also be made clear within the Statement. The EIB is responsible for ensuring that it does not fund projects that would be likely to undermine human rights and for taking action when a project it funds results in human rights abuses. Discharging this responsibility requires proactive measures by the EIB, and this should be clearly recognised within the Statement of Environmental and Social Principles and Standards.

Recommendation 1: The EIB should recognise explicitly and consistently that international and European human rights law and standards are the basis for the principles and standards of EIB policies

2. Put in place an effective due diligence system

Amnesty International recalls that in the context of business and human rights, the concept of due diligence describes the steps that must be taken to become aware of, prevent and address adverse human rights impacts³. Although there is a reference to due diligence in the implementation phase in the associated Handbook, Amnesty International urges the EIB to include a specific and explicit reference to the need for effective human rights due diligence in the Statement itself. Due diligence responsibilities should be clear for both the EIB as funder and the project promoter.

Amnesty International is concerned by the current screening mechanism used by the EIB for projects. We do not consider that it would be effective in ensuring a project does not have a negative impact on human rights. The assumption that EU social requirements are correctly implemented within the framework of national law does not allow the Bank to carry out due diligence except in the cases where there is evidence of the contrary. This is too limited and the EIB should expand due diligence to all projects.

At a minimum, an effective due diligence system should include robust preventive, mitigation and remedial measures, including:

- screening of projects in respect of their likely impact on human rights, such as through human rights impact assessments (the EU Environmental Impact Assessment Directive does not assess the human rights impact);
- the application of appropriate safeguards and mitigation measures to ensure that the human rights of individuals and communities affected by the project are respected; and
- appropriate monitoring and accountability mechanisms to ensure that projects comply with EIB policies and standards on human rights.

³ Report of the SRSG on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, April 2008.

Recommendation 2: The EIB should commit and give power to the management of the Bank to put in place an effective human rights due diligence system that includes effective preventive, mitigation and remedial measures and that is consistently applied to all EIB-funded projects, regardless of location.

3. Ensure transparency and meaningful consultation and participation within all EIB projects and initiatives

Amnesty International welcomes the Statement's references to transparency, consultation and participation. However, Amnesty International is concerned that the EIB leaves the responsibility for these issues with the project promoter (§ 59). The EIB should take proactive steps to ensure that all EIB-supported projects include meaningful, transparent and effective consultation and participation processes and that all individuals and communities that are likely to be affected have adequate and timely access to all appropriate information.

This commitment should be reflected in the Statement of Environmental and Social Principles and Standards and other relevant documents and guidance of the EIB.

Recommendation 3: Ensure effective systems for transparency and meaningful consultation are in place.

Conclusion

Amnesty International calls on the EIB to use the opportunity presented by the review of the Statement of Environmental and Social Principles and Standards to ensure respect for human rights is placed at the centre of EIB principles and standards. This Statement will serve as the basis on which EIB policies and practices will be defined. Specifically AI urges the EIB to reflect the following three critical issues in the revised Statement:

1. Explicitly and consistently recognise that international and European human rights law and standards are the basis for the principles and standards of EIB's policies.
2. Commit to the adoption and implementation of an effective due diligence system, which should, at a minimum, include the following:
 - a) Effective processes and mechanisms, including human rights impact assessments, to ensure that the EIB does not fund or invest in projects that would have a negative impact on human rights.
 - b) The establishment of appropriate monitoring and accountability mechanisms to ensure compliance with the EIB's own policies.
3. Ensure effective systems for transparency and meaningful consultation are in place.