Introduction

The reform of the EIB environmental and social standards is a crucial opportunity to implement sectoral policies.

Why sectoral policies?

General environmental and social standards are necessary but not sufficient. Several « sensitive » sectors have very specific impacts, which cannot be addressed with general standards. Therefore, specific sectoral policies are required to ensure that the EIB in these sectors applies the best international practices and will not support projects at the expense of local communities and the environment.

Many funders, including private banks ¹, already have implemented sectoral policies, and this trend is increasing. The EIB should follow this trend and position itself as a leader.

Friends of the Earth France recommends the EIB to adopt 5 sectoral policies:
– agriculture
– dams
– fisheries
– forestry
– mining.

The next chapters detail each of these sectors.

For more information

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¹ See the report « Mind the gap », BankTrack, December 2007, analysing the environmental and social standards of the 50 biggest private banks worldwide: www.banktrack.org
1. Best standards available

Over the past years various initiatives have been taken to develop standards in the agriculture and food sectors, both on a general, sector-wide level as for specific agricultural crops and commodities. What follows is a brief overview of the most promising developments:

**General certification and ecolabels**

The demand for more sustainable agricultural products is growing, though at present most target only niche markets. Eco-labelling takes place on an ever larger scale, using many different voluntary and mandatory environmental performance labels and declarations. The different terminology used, - varying from organic or fair trade to GMO free and reduced impact - makes the market for sustainable products somewhat opaque.

Therefore, the International Federation of Organic Agricultural Movements (IFOAM) has made efforts to implement third-party certification of organic agricultural products according to an elaborate and comprehensive Organic Guarantee System, accrediting certifiers who agree to apply the IFOAM Basic Standards for Organic Production and Processing. IFOAM has also expressed Norms for Organic Production and Processing.

The Sustainable Agriculture Network (SAN) developed the Standards and Policies for Sustainable Agriculture, supported by the Rainforest Alliance Agriculture Program.

One World Standards (OWS) and SAN currently cooperate to develop international standardisation procedures and policies to optimise conditions of tropical agriculture. OWS also assists IFOAM with a study of strategic options for its international accreditation programme.

Fairtrade Labelling Organizations International (FLO) is an association of 20 Labelling Initiatives that promote and market the Fairtrade label in their countries. Products carrying the Fairtrade label are certified to meet the Fairtrade Standards, both the applicable Generic Standards and the Product Standards. The Product Standards guarantee a minimum price considered as fair to producers. They also provide a Fairtrade premium that the producer must invest in projects enhancing its social, economic and environmental development.

The 2004 Social Accountability in Sustainable Agriculture (SASA) project was a collaboration between the four main social and environmental verification systems in sustainable agriculture: Sustainable Agriculture Initiative Platform (SAI), FLO, SAN and IFOAM. The SASA objectives were to improve social auditing processes in agriculture and to foster closer cooperation and shared learning between the participating initiatives. The project was rounded of with the Code of Good Practice for Setting Social and Environmental Standards, an international, normative document that is applicable to all social and environmental standards. The International Social and Environmental Accreditation and Labelling Alliance (ISEAL) has taken over the responsibility for the further implementation of this initiative.

With support of UNCTAD and IISD, the Sustainable Food Laboratory started the Sustainable Commodities Initiative (SCI) and developed the SCI-Benchmark tool, in order to improve the social, environmental and economic sustainability of commodities production and trade by developing global multi-stakeholder strategies on a sector-by-sector basis.

**Ecosystem conversion and land rights**

Sectoral initiatives can play a role in limiting the conversion of forests and other natural ecosystems as well as the appropriation of lands to which local or indigenous communities depend for their sources of income and nutrition. But as long as the global demand for agricultural commodities is growing at such a rapid pace these initiatives alone are unlikely to succeed in stemming these unwanted ecological and social impacts.

Furthermore, in some countries government policies continue to promote massive conversion of natural ecosystems and disenfranchise land rights of local people for expanded production of agricultural products.
commodities. Under such conditions sectoral initiatives run the risk of “leakage” or displacement of destructive activities to other countries, regions or commodities.

Complementary to sectoral initiatives, government policies are therefore needed:

- Policies in producing countries which adequately cover issues such as forest conversion, violation of indigenous rights, labour standards, etc.;
- Policies in consuming countries which effectively limit international demand for agricultural commodities, by promoting local food production, non-meat protein products, reduction of energy and meat consumption and sustainable energy production (including sustainable bio-energy).

**Food entitlement and economic development**

The agricultural sector has the potential to contribute to achieving universal entitlement to adequate and nutritious food and to economic development in developing countries. To realise this potential, adverse terms of trade, developed country subsidies and dumping practices and the uneven distribution of power in the production, distribution and end-consumption chain need to be addressed. Using agricultural lands to produce feed and biofuel commodities for export markets, instead of food products for the local population, should be discouraged as it is threatening food entitlement. It is also crucial to locate more value added activities in major agricultural and food chains in developing countries.

**Genetically Modified Organisms**

The *Cartagena Protocol to the Convention on Biological Diversity* sets out some labelling and notification provisions with respect to genetically modified organisms (GMOs). For example, trade in living modified organisms is prohibited without the approval of the importing country. Signatories are also supposed to apply the precautionary principle to the production and use of GMOs. The parties to the Protocol continue to address and develop standards with respect to GMOs.

Another problematic aspect of GMOs is that they make small farmers dependent on buying seeds and related inputs such as pesticides and fertilizers from large companies. This also leads to a loss of biodiversity.

**Rights of indigenous peoples**

Agricultural companies need to respect and guarantee the rights of indigenous peoples to protect their land, societies, cultures and livelihoods, by acknowledging their sovereignty and self-determination.

**Labour rights**

Health and safety conditions in the agricultural and food sector are often poor, among others because of extensive use of pesticides. Wages are generally low and bargaining rights regularly disrespected. Reference to best international standards on labour rights therefore is very important.

**Pesticides**

Regarding the use of pesticides the FAO issued the International Code of Conduct on the Distribution and Use of Pesticides, setting out voluntary, internationally accepted standards for the handling, storage, use and disposal of pesticides.

### 2. Content of the EIB policy

The EIB may play an important role in the global agriculture sector, by financing producers, processors and traders. The EIB should ensure for all its services in these production chains to avoid adverse sustainability impacts caused by its clients and by the suppliers of its clients. The EIB should endeavour to contribute to the entitlement of all to an adequate and nutritious supply of food and to economic development through sustainable investments in the agricultural and food sector in developing countries.

The EIB should also reward sustainable producers in terms of access and price of financing in light of the reduced risk that improved environmental and social impacts are likely to represent. They are also encouraged to actively participate in the development process of standards in the roundtables emerging for specific commodities, and use their influence to advocate policies in producing and consuming countries which adequately address the negative social and ecological impacts of the rising global demand for agricultural commodities.
The following elements should therefore be incorporated in the EIB’s agricultural policy or policies:

- Improving the key environmental and social impacts of production;
- Stimulating good practices for different products, following standards mentioned in paragraph before;
- Advocating policies supportive to these good practices in producing and consuming countries;
- Contributing to achieving universal entitlement to adequate nutritious food and to economic development;
- Exclusion of protected areas;
- Avoidance of GMOs;
- Acknowledgement of the rights of indigenous peoples;
- Acknowledgement of principal labour rights;
- Careful and minimal usage of pesticides;
- Careful management of water resources.

The EIB should either develop an integrated agriculture policy as long as sufficient attention is given to the specific characteristics of individual commodities, or choose to develop different policies for individual agricultural commodities, as long as the content of these policies is consistent on overarching issues.

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### Dams

**1. Best standards available**

The most authoritative and broadly supported set of standards to be applied to dam and water projects are the guidelines articulated by the World Commission on Dams (WCD). This body was convened by the World Bank and World Conservation Union (IUCN), and comprised 12 eminent members drawn from a broad spectrum of stakeholders. In an intensive multi-stakeholder process the WCD addressed the range of environmental and social issues associated with large dams based on worldwide experience over the last several decades, and provided a rich analytical and planning menu to draw from.

The centrepieces of the Commission’s recommendations were its “rights and risks” approach to project decision-making, and its seven strategic priorities and supporting principles:

1. **Gaining Public Acceptance**: Public acceptance of key decisions should be ensured for equitable and sustainable water and energy resources development. Where projects affect indigenous and tribal peoples, such processes are guided by their free, prior and informed consent.

2. **Comprehensive Options Assessment**: Alternatives to dams should be subject of a comprehensive and participatory assessment of the full range of policy, institutional and technical options, in which social and environmental aspects have the same significance as economic and financial factors.

3. **Addressing Existing Dams**: Opportunities should be taken to optimise benefits from existing dams, address outstanding social issues and strengthen environmental mitigation and restoration measures.

4. **Sustaining Rivers and Livelihoods**: Options assessment and decision-making around river development should prioritise the avoidance of impacts, followed by the minimisation and mitigation of harm to the health and integrity of the river system. Avoiding impacts through good site selection and project design is a priority.
5. **Recognising Entitlements and Sharing Benefits**: Mutually agreed and legally enforceable mitigation and development provisions need to be negotiated with adversely affected people. Accountability of responsible parties to agreed mitigation, resettlement and development provisions is ensured through legal means, such as contracts, and through accessible legal recourse at the national and international level.

6. **Ensuring Compliance**: Compliance with applicable regulations, criteria and guidelines, and project-specific negotiated agreements needs to be secured at all critical stages in project planning and implementation. Regulatory and compliance frameworks use incentives and sanctions to ensure effectiveness where flexibility is needed to accommodate changing circumstances.

7. **Sharing rivers for Peace, Development and Security**: The use and management of resources should be the subject of agreement between states to promote mutual self-interest for regional cooperation and peaceful collaboration. Dams on shared rivers should not be built where riparian states raise objections that are upheld by international panels.

It should be noted that similar problems as with dams are occurring with other water infrastructure projects, including navigation works, inter-basin water transfers and large irrigation projects. Similar principles could be applied on the construction and financing of these type of projects.

2. **Content of the EIB policy**

The EIB provides assistance to dams and associated infrastructure projects and it should therefore adopt a sectoral policy which incorporates the WCD recommendations.

This policy should apply to all dams and associated infrastructure but could be expanded into a wider freshwater policy. This could cover all significant water infrastructure projects, including navigation works, inter-basin water transfers and large irrigation projects.

With regard to dams the WCD considered the implications of its findings for private sector financiers, and provided a set of recommendations for them to follow. As a public bank, the **EIB should as a minimum implement these recommendations**:  

1. Use comprehensive options assessments as a risk mitigation tool;  
2. Incorporate the WCD principles, criteria and guidelines into the environmental and social policies of the financial institution and use the guidelines as minimum screens for evaluating support for, and investment in, individual projects;  
3. Develop legally binding environmental and social provisions in the insurance coverage and the debt and equity arrangements of the financial institution;  
4. Develop criteria for bond-rating systems for use in financing all options, including large dams, in the water resources and electric power sectors.

In addition to the WCD recommendations, the EIB policy should preclude support for dam projects that are located in, or substantially impact upon, critical natural habitats, Ramsar-listed wetlands and UNESCO World Heritage Sites.
1. Best standards available

Several international treaties, as well as agreements, action plans and codes of conduct negotiated under the auspices of the Food and Agriculture Organization of the United Nations (FAO), set out a clear and comprehensive international consensus on many aspects of fisheries management. Enshrined in the UN Law of the Sea Convention, the UN Straddling Stocks Agreement and the FAO Code of Conduct for Responsible Fisheries, these set clear goals of achieving the sustainable management and use of the world’s fisheries. Widespread consensus also exists on the following principles and measures necessary for achieving that goal:

Certification of sustainable fisheries

The leading effort for certifying sustainable marine fisheries is the Marine Stewardship Council, which is the only certification scheme which is consistent with the FAO Guidelines for the Ecolabeling of Fish and that is based on the FAO Code of Conduct for Responsible Fisheries. The MSC was developed through unparalleled international consultation between stakeholders. So far, the MSC has certified 21 fisheries and has 21 under review. 42% of the global wild salmon catch and 32% of the global prime whitefish catch are included in the programme. The MSC also employs a product tracking mechanism that can help trace chain of custody and ensure fish are coming from legal sources.

Ecosystem based management of fisheries

International standards and regulations for fisheries management have evolved from emphasising particular fish stocks to a more ecosystem-based approach. Thus, for example, the UN Straddling Stocks Agreement not only requires the sustainable management of particular stocks, but also the assessment and conservation of nontarget species in the same ecosystem. Similarly, the FAO Code of Conduct for Responsible Fisheries requires users of living aquatic resources to “conserve aquatic ecosystems” and “not only [to] ensure the conservation of target species but also of species belonging to the same ecosystem or associated with or dependent upon the target species”.

Additionally, the FAO has endorsed a comprehensive Ecosystem-Based Management (EBM) framework for marine capture fisheries developed by WWF. The FAO Code of Conduct for Responsible Fisheries also issues guidelines on measures to maintain livelihoods of inshore fishing in the poorest nations’ communities. A WWF toolkit with implementation examples in fisheries worldwide now also exists.

Precautionary principle for sustainable fisheries management

Emerging international standards for fisheries management recognise the inherent uncertainties associated with questions regarding the health, reproductive rates or populations of, or fishing impacts on, target and associated species. As a result, the main agreements mentioned above all adopt the precautionary principle for fisheries management. Uncertainty or an absence of adequate scientific information (over the exploitation of deep-sea species, for example) should not be used as a reason for postponing or failing to take conservation or management measures. Such uncertainty may exist in any fishery, but particularly in new or exploratory fisheries.

Eliminating overfishing and restoring stocks

Under the UN Straddling Stocks Agreement, states are obliged to “prevent or eliminate overfishing”. Conservation and management decisions for fisheries should be based on the best scientific evidence available and should be directed at maintaining or restoring stocks. States and fisheries managers should make every effort to restore critical habitats or others adversely affected by human activities. Marine Protected Areas (MPAs) are now recognised as critical for maintaining and restoring fish and other marine biodiversity. Some Fisheries MPAs are designed to be “no-take zones” where fish and their habitat can be restored over time, thus serving as reservoirs for the rest of the ocean.

Eliminating and avoiding overcapitalisation

Overcapitalisation of fishing fleets, often supported by large subsidies, is a recognised driver of overfishing in many regions of the world. Governments have consented in the UN Straddling Stocks Agreement to take measures to prevent or eliminate excess fishing capacity and to ensure that fishing efforts do not
exceed those commensurate with the sustainable use of fishery resources.” Governments at the FAO agreed to “review the capacity of fishing fleets in relation to sustainable yields of fish resources and where necessary reduce these fleets.”

**Eliminating destructive fishing practices**

The FAO Code of Conduct for Responsible Fisheries accords a general priority to selective and environmentally safe fishing gear and practices, recommends measures to phase out the use of any irresponsible gear, methods or practices, and calls for the assessment of impacts on habitats before new fishing gear is introduced on a commercial scale. International standards have also been identified for restricting or banning certain types of fishing practices or gear, including the use of explosives or cyanide fishing, the use of driftnets, high seas bottom-trawling, and shark-finning.

**Minimising by-catch**

By-catch is the amount of non-target species caught and typically discarded while fishing for other species. The industry average for all fisheries is 250g of by-catch for every 1kg of target species. Some fishing practices such as shrimp trawling lead to as much as 3kg of wasted fish or non-fish species for every 1kg of target species. As much as 7kg of marine animals are killed by beam trawlers to produce 450g of marketable sole. The figure is similar for plaice.

The FAO Code of Conduct for Responsible Fisheries states that users of aquatic ecosystems “should minimise waste, catch of non-target species, both fish and non-fish species, and impacts on associate or dependent species”. Action plans have been adopted to reduce the impact on by-catch of certain species or groups of species, including seabirds and sharks.

**Illegal, Unregulated and Unreported fishing and flags of convenience**

A significant problem in fisheries management is the illegal, unregulated or unreported (IUU) fishing conducted in violation of international or national fisheries conservation measures. This often involves vessels registered under “flags of convenience” in countries that are notoriously lax in their regulations. The FAO’s Plan of Action on IUU fishing seeks to eliminate the practice in part by encouraging states to prohibit doing business with companies engaged in IUU fishing. A recent WWF Report on IUU fishing recommends that the banking sector should ensure it supports only legal operations by requiring the catch to be documented through the full chain of custody.

**Endangered species**

Commercial trade in many fish species, including some that are commercially important, is now either banned or restricted under Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The FAO Code of Conduct for Responsible Fisheries also recognises the particular importance of protecting endangered species.

**Sustainable aquaculture**

Although aquaculture has been heralded as important for diversifying income and diet in many coastal communities, it can also have substantial impacts on sensitive coastal wetlands, water quality and the genetic diversity of native fish. The FAO Code of Conduct for Responsible Fisheries calls on states to ensure that adverse environmental impacts of aquaculture are assessed and minimised. Resources should also be used responsibly such as where some types of aquaculture have unsustainable protein conversion rations (salmon require 3kg of protein for every 1kg of salmon produced, tuna require 10kg). Aquaculture investments should be directed towards herbivorous fish species such as catfish and tilapia. In August 2006 the International Principles for Responsible Shrimp Farming were launched after a five-year consultative process involving several partner organizations, including the Network for Aquaculture Centres for the Asia Pacific, WWF, the World Bank and the UN Environmental Programme, the new principles represent the first-ever attempt to provide an overarching international framework for improving the sustainability of the shrimp farming industry.

**2. Content of the EIB policy**

The EIB should adopt a policy that commits it to the internationally accepted goal of the sustainable management of fisheries. The policy should require fisheries to be sustainably managed according to ecosystem-based and precautionary approaches, and certified where possible by the MSC or other credible, independent third party sustainability certification systems. Clients should be screened to ensure that they do not participate in or buy fish from fisheries over fishing, using destructive or wasteful fishing practices, operating in an over-capitalised fishery or fishing illegally or in an unregulated or unreported manner.
The policy should also require catch documentation schemes to be used to verify the legality of fishing operations, support “no commercial fishing” zones in and around Marine Protected Areas, and prohibit trade in endangered or threatened species. In addition, the policy should address the environmental and social impacts of all fishing and related activities, including aquaculture.

The FAO identifies bankers and insurers as important targets for efforts to combat fishing by vessels flagged under the authority of countries with lax resource conservation laws. The FAO Code of Conduct for Responsible Fisheries, for example, discourages financial institutions from requiring as a loan or mortgage condition, fishing vessels to be flagged in a jurisdiction other than that of the country of beneficial ownership, where such a requirement would increase the likelihood of non-compliance with international conservation and management measures. Banks should ensure that their support is not going to companies that operate under flags of convenience and ensure that the link to the beneficial owner is apparent. Finally, it is critical that the banking sector considers the impacts of its investments in seafood throughout the supply chain. Sustainable investment is required for seafood businesses whether at the catching, processing, transport, retailing or food service points of the chain. The banking sector can foster sustainability, for example by requiring proof of legal activity, encourage preferential purchasing of more sustainable product and by promoting MSC certification throughout the supply chain.

Forestry

1. Best standards available

The most important international standards and initiatives for the forestry sector are:

Land rights of local and indigenous communities
Uncontested land rights and title are a prerequisite for secure forest tenure, just as access to forests and forest resources are prerequisites to sustainable forest management. Various international conventions acknowledge the rights to the fair and equitable use of forest resources by indigenous peoples and forest-dependent communities. The UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly of the United Nations in September 2007, affords indigenous peoples right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

Illegal logging and forest governance
Since 2002, a number of Ministerial Conferences on Forest Law Enforcement and Governance (FLEG) have been organized in the East Asia and Pacific region, Africa and in Europe and North Asia, co-hosted by both producer and consumer governments and the World Bank. A potential FLEG initiative in Latin America and the Caribbean is underway. These ministerial-level political processes aim to mobilize international commitment from producer, consumer and donor governments to increase efforts to combat illegal logging as well as the associated trade and corruption in the forest sector.

In 2004 the European Union adopted the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan developed by the European Commission in May 2003. The Action Plan sets out a new and innovative approach to tackling illegal logging, linking good governance in developing countries with the legal trade instruments and leverage offered by the EU internal market. The Action Plan describes a package of measures, including encouraging the private sector to adopt purchasing policies to exclude illegal timber from their supply chains and encouraging measures to avoid investment in activities that encourage illegal logging.
Certification of forest management and chain of custody

Most certification schemes developed to guarantee sustainable forest management unfortunately fail to secure balanced decision-making in the development and monitoring of their standards. In most cases this basic failure coincides with the scheme being closely linked to companies active in the forestry sector. In these cases, the schemes only reinforce the status quo of unsustainable and often illegal forest management, rather than improving it. This unbalanced representation at the standard setting table is reflected in the widespread failure of most certification schemes to recognise the rights of indigenous peoples and forest-dependent communities to participate in decision making.

The only certification scheme which deals with this subject in a convincing way is the Forest Stewardship Council (FSC), which represents forest owners, forestry companies, trade unions and social and environmental organizations. FSC has formulated ten Principles of Forest Stewardship. With the associated Criteria these form the basis for all FSC forest and plantation management standards. Over the past 13 years, over 90 million hectares of forests and plantations in more than 82 countries have been certified according to FSC standards while several thousand products are produced using FSC certified wood and carrying the FSC trademark.

FSC is the only certification scheme consequently supported by all major environmental and development NGOs, as well as many grassroots organisations. However, this support has been tested and will depend on FSC’s ability to adapt to new challenges, improve its standards and improve its performance on the ground.

Protected areas and High Conservation Value Forests

Forestry activities in any of the protected areas covered by the IUCN I-IV categories, the UNESCO World Heritage Convention and the Ramsar Convention should be excluded from financing.

The concept of High Conservation Value Forests (HCVFs) was developed by the FSC to provide a framework for identifying forest areas with special attributes that make them particularly valuable for biodiversity and/or local people. In its origins, the concept was thus part of the FSC’s overall framework aimed at improving forest management. The concept has since been more widely adopted, often without ensuring a link to crucial social and land use aspects that were ensured through the FSC’s nine other principles and criteria.

The aim of applying this framework is to better identify and then design and implement appropriate management options for these areas in order to preserve or enhance their key ecological and socio-economic values. In some cases, effective protection of HCVF values will preclude expansion of industrial activities.

HCVFs are defined as “natural habitats where conservation values - including the presence of rare or endemic species, sacred sites, or resources harvested by local residents - are considered to be of outstanding significance or critical importance”. The generic Global HCVF Toolkit provides guidance on how to apply the concept in specific situations. At present the toolkit is being revised to ensure that HCVF-assessments address the full range of values, take account of legality, customary rights and local consent requirements and are carried out in a participatory manner.

2. Content of the EIB policy

By financing companies in the forestry sector, the EIB can have a significant impact on forest conversion, degradation and destruction. It must therefore develop a policy that sets conditions which should be met before providing support to the forestry sector.

This policy needs to cover at least the forestry sector as such, comprising forestry, timber, pulp and paper, furniture and other wood-processing and trading companies. The following issues should be set as preconditions for financing in this sector:

- No forest conversion;
- No outstanding land use conflicts;
- FSC-certification for existing operations involved in managing forests and tree plantations;
• FSC Chain of Custody certification for their full supply chain for existing operations involved in trading and processing wood-products (including pulp, paper and plywood mills as well as furniture manufacturers);

• A clear and enforceable approach to achieve FSC-certification integrated in the project plan for all start-up operations in the forestry sector. This is especially important for plantations and pulp mills. These plans should be verified as follows:
  - For tree plantations an independent assessment of their environmental and social impacts is necessary, including the cumulative and macro impacts when new plantations are located in regions in which already many plantations are located;
  - For pulp mills an independent assessment has to verify the guaranteed availability of a sustainably produced supply of timber for the pulp mill.

Due to the ongoing revision of plantation certification within FSC, the EIB should not solely rely on the client’s plans to achieve or maintain FSC certification of plantations. The social and environmental track record of the client should be checked as well and the environmental and social risks of doing businesses in countries with weak environmental law and/or implementation practices should be taken into account.

The EIB can choose to integrate its forestry sector policy in a wider forest policy, which also covers all corporate clients in the agriculture, oil & gas, mining, dams and other industries which have impacts on forests. In this case the specifics of each sector should be dealt with in a sufficient way.

The Guidelines for Investment in Operations that Impact Forests which was published by WWF in September 2003 can help the EIB to identify critical issues and develop a forest policy.

If the EIB’s policy would be wider than the forestry sector as such and would also cover other operations which can impact forests, the following preconditions for financing should at least be added to the policy:

- Commitment to identify and protect HCVFs in the forests managed by the client while ensuring local access and non-industrial use by local communities;
- Identification of specified forest ‘no-go zones’ where industrial activities by clients will not be financed;
- Specific acknowledgment of the rights to the fair and equitable use of forest resources by indigenous peoples and local communities;
- Commitment to further the goals of the FLEG processes in the client’s sphere of influence.

Specific attention is needed for small-scale and community-based forestry operations, which are far more likely to operate in a sustainable way.

**Mining**

1. **Best standards available**

Initiatives to address potential risks to the community and natural environment are diverse, but international consensus is emerging with regard to standards and norms for improvement of extractive projects. The Framework for Responsible Mining, developed by WWF and the Centre for Science in Public Participation, provides a comprehensive analysis of environmental, social, community and governance issues to be addressed in a policy for the mining sector. Additionally there are a number of international conventions and multi-stakeholder processes which set important standards for mining operations.

**Emergency response and prevention**

Following environmental accidents in the mining sector, United Nations Environment Programme (UNEP) in 2001 convened a multi-stakeholder initiative for the mining industry as part of its 1988 Awareness and
Preparedness for Emergencies at a Local Level (APELL) programme which helps companies, response bodies and communities to be fully prepared to deal with incidents.

Waste management
Many environmental problems associated with mining are related to the generation and management of waste. Existing standards and guidelines regarding waste management have been developed:

- The 1972 Convention on the Prevention of Marine Pollution by Dumping Wastes and other Matters prohibits the dumping of mercury and mercury compounds directly into the sea, and requiring special permits for dumping cyanide and heavy metals.
- The 2003 Extractives Industries Review (EIR) by the World Bank recommends that companies should avoid sub-marine and riverine tailings disposal, and that companies explore safer alternatives to the use of cyanide and mercury.
- The Mining, Minerals and Sustainable Development (MMSD) project, carried out in 2000-2002, endorsed a presumption against riverine disposal. Legislatures and regulatory agencies in countries such as the United States and Canada have banned the practice of dumping directly into rivers.
- Large mining companies such as BHP Billiton have indicated they will not use riverine tailings disposal in any new projects, and that it is unlikely that they would use submarine tailings disposal in any future projects.
- The gold industry has developed an International Management Code for Cyanide, a voluntary agreement which emphasises minimising the use of cyanide, safe transport, worker health, safety and training, emergency response plans and third party audits. The code still lacks guidelines on waste disposal.

Closure of production facilities
The procedure by which a mine is closed can have an impact on the surrounding community and ecosystem for years, potentially in perpetuity. The Mining, Minerals and Sustainable Development (MMSD) project calls upon companies to address the effect of mine closure on host community’s development aspirations (such as through a Community Development Plan), and the allocation of resources and responsibilities that would be required to realise them. The best standard in this respect is set by the United States and some other jurisdictions, where mine closure standards require companies to provide a financial guarantee for clean-up, restoration and ongoing monitoring.

Financial transparency
In countries where governance is weak, activities in the mining industry may contribute to poverty, corruption and conflict. The Extractive Industries Transparency Initiative (EITI), supported by a coalition of governments, companies, civil society groups and investors, is a voluntary host-country driven process that has established criteria for full publication and verification of company payments and government revenues from mining. The Publish What You Pay coalition is further calling for:

- revenue transparency requirements on extractive companies and resource-rich country governments to be incorporated into international norms and standards such that extractive companies (multi-national, private and state-owned) publish what they pay to governments in every country of operation and governments disclose what they earn from extractive companies;
- disclosure of key contract provisions between governments and extractives companies (such as environmentally and socially-relevant portions of Host Government Agreements or Intergovernmental Agreements);
- banks to disclose all resource-backed loans and require that the borrowers agree to be audited in a transparent fashion, as a condition of receiving the loan. Transparency requirements are increasingly being imposed by multilateral lending institutions, including the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD):
  - The IFC Policy on Social and Environmental Sustainability requires clients of new extractive projects to disclose payments to host governments, and to ensure that payments from projects to host governments are also disclosed;
  - The EBRD Energy Operations Policy includes a minimum requirement for project sponsors to disclose their payments to host governments and to adhere to the principles and criteria of the EITI. A good example of best practice, it also requires public and private project partners in the extractive industries to put in place transparent systems for accounting for financial flows from energy projects and for widespread publish dissemination of this information.
Artisanal and small-scale mining
If well managed, artisanal and small scale mining can be a catalyst to sustainable economic and social development at the local level. The Association for Responsible Mining (ARM) is an independent multi-stakeholder initiative seeking to enhance equity and well being in artisanal and small scale mining communities through improved social, environmental and labour practices, governance and the implementation of ecosystem restoration practices. In March 2007 ARM published the draft Standard Zero for Fair Trade Artisanal Gold and Associated Silver and Platinum.

Protected areas
Mining activities in any of the protected areas covered by the IUCN I-IV categories, the UNESCO World Heritage Convention and the Ramsar Convention should be excluded from financing.

Nature of contracts
The contracts signed by mining companies should ensure that the jurisdiction in investment disputes lies within the country in which the investment is located. Investors should commit to use local and national means of recourse, not those of their home countries or of international corporate arbitration committees. The Calvo Doctrine, which has been incorporated into several state constitutions and been included in a number of treaties, statutes and contracts, is a recognized and widely used principle. As best practice, it prevents the abuse of the jurisdiction of weak nations by more powerful actors. This is also in line with the 1974 UN Charter of Economic Rights and Duties of States, which determined that foreign investment should be subject to the laws, regulations and policies of the host state.

Sovereignty over resources
The legislative framework covering natural resources varies from country to country. However, mining companies should recognise that the concept of Permanent Sovereignty over Natural Resources was enshrined in a number of United Nations resolutions. The 1962 UN Declaration on Permanent Sovereignty over Natural Resources gave producing countries a right not only to make decisions about how to extract or manage their natural resources, but also to expropriate or nationalise where it is in the public interest to do so, as long as compensation is paid. Amending this declaration, the 1966 UN Resolution 2158 (XXI) dealing specifically with developing countries, promoted joint ventures as the most appropriate model for development.

Respect for the national sovereignty over resources needs to be matched by respect for the rights of indigenous peoples.

Good governance
To avoid negative impacts deriving from the resource curse, it is important that mining extraction be correctly sequenced with minimum good governance standards. The Extractives Industries Review (EIR) of the World Bank recommends that private investments in extractive industries should not be promoted where governance is inadequate and that “explicit core and sectoral governance requirements should be met” before a project is financed.

Rights of indigenous peoples
Mining companies need to respect and guarantee the rights of indigenous peoples to protect their land, societies, cultures and livelihoods, by acknowledging their sovereignty and self-determination, and in particular their right to exercise Free, Prior and Informed Consent for developments on their land.

Human rights
Mining companies need to ensure that they respect, promote and secure the human rights of those affected by their operations. This involves avoiding direct, indirect and silent complicity in human rights abuses.

Industry specific standards
For some minerals and sub-sectors of the mining industry, specific standards are being developed:
- The role of the diamond industry in armed conflicts has led to the development of the Kimberley Process Certification Scheme. The scheme requires governments to certify rough diamonds that are free from conflict diamonds. The certification process is a useful first step, but currently lacks independent monitoring mechanisms.
- The Council for Responsible Jewellery Practices, with members in all parts of the gold and diamond jewellery chain, works on development of a certification process similar to Kimberley.
The two initiatives above, as well as several others, since August 2006 collaborate in the Madison Dialogue. This is a cross-sector multi-stakeholder initiative seeking to encourage best practices, sustainable economic development and verified sources of responsible gold, diamonds and other minerals.

The Roundtable of Sustainable Platinum Group Metals aims to find agreement on strategic questions related to PGM, as a basis for concrete actions towards more sustainable PGM that can be endorsed by relevant stakeholders.

As these initiatives are still in their early stages, they do not yet provide credible standards to which the EIB policy could refer. It is however recommended to follow their development.

2. Content of a the EIB policy

The EIB will have to adopt clear policies incorporating the standards described above, stimulating its mining clients to adhere to best practices in the following fields:

- Emergency response and prevention
- Waste management
- Closure of production facilities
- Transparency and tax avoidance
- Artisanal and small-scale mining
- Protected areas
- Nature of contracts and sovereignty over resources
- Good governance
- Indigenous peoples and human rights

The policies will have to be consistent with other policies relevant for the mining industry, such as Human rights, Indigenous peoples, Biodiversity, Tax and Climate change, which should be also adopted by the EIB, notable in its environmental and social statement.