Comments on the Bank’s Statement of Environmental and Social Standards of March 2008
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26 June 2008

1. **Neglect of Global Warming**

   If the scientific consensus expressed in the fourth IPCC report is broadly right, climate change, or more neutrally global warming, should be the first of all environmental issues. The adoption of this EIB statement is a chance to alert policy makers and the informed public. It may persuade them to recognise the scale of the investments needed to meet a goal that the most modest precautionary standard would set in terms of a reduction and elimination of man-made atmospheric carbon emissions. For the EIB, this matter seems still to be work in progress. The EIB statement lacks an adequate treatment of the subject.

   Environmental sustainability should be at the heart of the policy. It is instead relegated to an aspect of the broader goal of sustainable development (page 6, paragraph 1). This puts the matter the wrong way round. Sustainable development is one means to achieve a sustainable environment. If the IPCC is right, the present world environment is not sustainable. Development, as a policy goal, should be subordinated to that broader goal to make the life of humanity sustainable.

   To put it another way, the EIB statement speaks of sustainable communities. It should, in the light of the IPCC findings, set itself the aim of helping to make humanity an all-embracing sustainable community.

   Furthermore, to the extent the Bank addresses climate change, it addresses it not as an object of policy but a constraint and opportunity for the Bank’s general loan policy. This criticism is elaborated in section 7 below.

2. **Ambition in the Statement**

   The EIB statement is both over-ambitious and under-ambitious. It overstates the impact that the Bank could have and it underplays the powerful mechanisms that the Bank could use to help it make a difference.

   The EIB statement takes a narrow and uncontroversial view of environmental issues. The main message of the statement is self-evident. It is that the Bank must follow EU environmental law and policy and must assume and expect that, within the EU and, selectively also outside the EU, its borrowers and beneficiaries respect international standards. The same is true of social principles and standards. More adventurously, the Bank states (page 10, paragraph 4) that it will not finance projects that harm human beings. That seems too wide a proposition. The true task is to strike a balance between conflicting human interests.

   The statement should be more reflective. It should contribute to the public understanding of the impact of economic growth on the environment and of the scope for action by an international financing institution. Bank staff and borrower staff should read in the statement a guide to their respective parts in the financing discussion.

   The statement seems sometimes at odds with the Bank’s handbook on environmental and social practice. The latter is more realistic, especially about the influence that the Bank can bring to bear on promoters, and about the importance of co-financing with other institutions. The statement should also provide for its translation into the annual corporate operational plans of the Bank.
3. Environmental Process

The EIB statement should express concern for process on a level with principles and standards. The EIB seems content to expound these norms. It repeats, as a mantra, that it accords a high priority to them and that they are among its core objectives, to use some of the EIB’s pleonastic expressions. It is more useful to discuss process. The Bank’s impact on environment is indirect, and it works mainly through influence on borrowers. The influence comes through the medium of loan discussions. Since the Bank cannot compel any borrower to modify its choices as they affect the environment, the EIB should use this statement as a means to maximize its influence in negotiation. The Bank’s influence will be greater, the more it shows itself seriously intent to apply its standards.

This requires:

- That the Bank be able to demonstrate that it is has withdrawn and will withdraw from projects that do not meet those standards, and that the Bank will publicly announce its reasons, if it deems it legitimate and opportune to do so.

- That the Bank be concerned with substance, and less with impact on its reputation. Only in so far as the protection of its reputation is a motive to induce caution among loan officers and technical project appraisal experts, should the Bank invoke reputation. It should be a secondary motive at best. Conversely, if the Bank believes that a controversial project meets the EIB’s environmental standards, and that the safeguards are adequate, the Bank should actively support the project, even at a risk to its reputation. In occasions of controversy, the Bank may have its best chance to have a beneficial influence.

- That the Bank declare that the negotiation of a loan should include a dialogue on carbon impact and other environmental effects. This may seem obvious, but it more realistic than statements tending to imply that the Bank has the bargaining power to require a borrower to comply with one norm or another. The dialogue would cover the borrower’s internal processes, its checks and balances, its own safeguards and its self-interest, as well as the broader general interest.

In the statement, the Bank should differentiate between borrowers. For instance, the staff of multinational corporations will, or at least many of them will, be at least as aware of environmental threats and impacts, and reputational risks, as the staff of the Bank. On the other hand, public-sector promoters in neighbouring countries and in recent EU member states may be less sensitive to the public interest, and may need a stronger pressure be brought to bear upon them. The EIB statement fails to make this distinction between borrowers. It speaks grandly of requiring borrowers to conform to certain standards. The reality is that the Bank decision-making bodies are as keen to make the loan as the borrower is to receive it. In the face of competition from other sources of finance, the Bank may be perceived to be ready to bend its principles. This perception may be false. Nevertheless, the Bank must take care to dispel it. A strong and more pragmatic statement would better serve this purpose.

4. Modes of Enforcement

To render the process of environmental and social protection more effective, the Bank’s principles should include a discussion on modes of enforcement of social and environmental covenants accepted through the medium of the financial agreements. The EIB is not alone among international institutions in finding it difficult to enforce a covenant that is designed not to protect the financial interests of the Bank but its environmental goals. To this end, the Bank should (a) consider publication of such covenants, at least where public-sector borrowers and promoters are concerned; and (b) find some means to make their enforcement more credible.
Such means could include a trust fund to pay for respect for the covenant and, where the covenant is designed to protect an identified segment of humanity, a requirement that a channel be created for consulting representatives of, or trustees for, the protected communities. Another means, that could be appropriate in very large projects located in countries where certain communities may be largely excluded from the political processes of the country, and where the rule of law is in its infancy or in decline, is a dispute resolution procedure. The Bank should promote, where it might be useful, the setting up of a panel to hear complaints of violations of commitments and covenants given by a promoter. The Bank, with its partners financing bodies, might insist on the establishment of such a panel and of the creation of an independent fund to pay compensation awarded by the panel. The awards should be legally binding. The borrower would, if one or other such an instrument were in place, understand that the Bank would be constrained to enforce the covenant or, according to the case, that the covenant, being a public commitment, would be self-enforcing. That will tend to make the borrower better inclined to respect the covenant, without the need for pressure from the Bank.

5. Realism

It is expensive for the EIB to monitor projects and enforce covenants. Since a borrower is aware that a lender is averse to incurring expense that does not protect its financial interest, the EIB should aim to demonstrate that it has means to recover the cost, or that it has pre-funded the cost. All this adds to the credibility of the environmental or social policy. It is better to work towards a more limited and credible policy than towards a policy expressed in broad and sometimes rhetorical terms and lacking a concrete and plausible mechanism.

6. Extractive Industry Projects

The Bank should pay especial attention to mining projects and hydrocarbon projects. The financial rewards for licence holders in such projects are so great that the concern for the financial and social welfare of the host country may be subordinated. The Bank should be slower to finance such projects. The Bank may be tempted to finance them because they have a high profile, despite their low social benefits. The Bank should, as part of its environmental and social policy, set separate standards for such projects. They might include:

1. Stricter respect for subsidiarity, i.e. lend only where, relative to other sources of funds, the Bank can bring a material policy benefit.

2. Require that the licensee set up a fund or guarantee to cover likely clean-up costs for reinstatement of the site for the benefit of the affected community. The Bank should show that it insists on avoiding a recurrence of those notorious cases where the promoter declares bankruptcy to avoid clean-up costs.

Establish a rule not to finance such projects, except where the award of the licence to exploit is the outcome of a public competitive bidding process that includes environmental protection. There is evidence that such a process brings inestimable benefits to the host country. The Bank should insist on such a condition, in the absence of clear, compelling and public reasons for the lack of it.
7. **Global Warming is Central**

The statement takes a surprisingly light approach to climate change. It treats it a business opportunity for borrowers, for whom the Bank would act as a stimulus. Secondly, it treats climate change effects, such as rising seas, as economic constraints on projects. Both these approaches have their merits but they have little to do with a policy towards countering climate change. The Bank seems here to perpetrate confusion about its duty.

Among the points that an environmental policy on climate change should include are the following:

- Aiming to be ahead of EU policy, where that policy falls short of the IPCC toughest standard of limiting the CO₂ equivalent concentration in the atmosphere to 450 parts per million. In the past, the Bank vaunted its competitive procurement policy as an advance on EU legal requirements. The case of climate change offers the Bank a second opportunity to be ahead legal norms. In doing so, it would act simultaneously in the interests of the public and of its borrowers. The Bank does not need to adopt an independent scientific position; it is enough that it presume that its shareholders wish it to guide itself by a public policy document, i.e. the IPCC study, which their representatives have endorsed.

- Thus, for instance, the Bank should set absolute, as well as relative reductions in carbon emissions as its goal. Thus, for instance, it should not be enough for a borrower to justify, say, a coal-fired power station or a cement plant on the ground that it uses the best technology and that the new plant is more efficient than the plant that it will replace.

8. **Envoi**

The Bank has many ways to promote greener policies and projects. It displays little sense of urgency and no sense of the immensity of the financing task that will face it, if it is to play its part in the process of ameliorating man’s impact on the environment.