SHERPA

Contribution to the EIB Statement of Environmental and Social Principles and Standards (draft II -1 October 2008)

Sherpa is an association of lawyers specialised in corporate social responsibility and international law. It was created in 2001 by William Bourdon, former Secretary General of the International Federation of Human Rights (Fédération Internationale des Droits de l’Homme, FIDH). Its main objective is to find remedies and undertake legal actions against malpractices of multinational firms and financial institutions which, through their investments abroad, are responsible for human rights violations and environmental damages throughout the world.

To this end, Sherpa conducts, on its own initiative or upon request from affected persons, field investigations together with legal analyses in order to build cases against multinationals responsible of serious violations of human, environmental or social rights. In addition, Sherpa is involved in various research and development papers that aim at elaborating new legal instruments and making recommendations to competent authorities.

Therefore, Sherpa is pleased to contribute to the second round of European Investment Bank's public consultation on its Environmental and Social Statement (“the Statement”).

This Statement presents an opportunity for the Bank to fully commit itself to the rule of law and respect for environmental, social and human rights standards. To this end, the Statement must be a clear commitment to abide by relevant, identified and precise standards when financing projects, either within or outside the European Union. This commitment must cover all stages of projects, from preparation to implementation, and set out in unambiguous terms the responsibility of the Bank when a project fails to meet the requirements of the Statement.
1. GENERAL COMMENTS

1.1. Overall complexity and lack of legibility

The Statement refers to other, often lengthy documents, in particular: the EIB Environmental and Social Practices Handbook (“the Handbook”)1, the EIB Public Disclosure Policy2, Corporate Responsibility Reports3. It does so usually without giving any precise reference within the document (page or paragraph number) and without clarifying the relationship between the Statement and the document and/or the status or binding force of that document.

This practice of superposing and intertwining numerous and lengthy documents contradicts the very purpose of the consultation, which is to make the Bank more open and transparent. Indeed, it makes it very difficult for the reader to identify and understand the applicable standards and procedures.

Recommendations

- Core principles in terms of social, environmental and human rights standards as well as the mechanisms to ensure their application, including the respective obligations and responsibilities of the Bank and the promoter should be clearly set out and accessible in a single, clear and coherent document -that is, the Statement. All other documents issued by the Bank (including contracts between the Bank and a third party) should comply with the Statement in accordance with the principle of hierarchy of norms. To do otherwise would make the Statement and the current public consultation meaningless as it prevents discussion on the aspects most important to the Bank’s financing activities.

- For instance, as stated in paragraph 12 of the Statement background, “the Handbook translates the environmental and social principles and standards described in the Statement into the operational practices of the EIB”. This means that the Handbook must comply with the Statement. Therefore, it is not enough for the Bank to rely on the Handbook on crucial matters such as, for instance, reporting and monitoring obligations or the responsibilities of the Bank and the promoter. These obligations and responsibilities are crucial to the proper implementation of the EIB social and environmental principles and standards and to the existence of effective redress mechanisms. The main principles of these obligations and responsibilities should be set out in the Statement itself, subject to further details in other texts in accordance with the Statement.

- The Bank should also clarify what is the relationship between the Statement and the 2004 Environmental Statement and whether the former is meant to replace the latter.

- Whenever referring to a document, the Statement should provide precise reference and indicate the relevant page or paragraph rather than refer to a 132 page document in its entirety.

1 Statement, §§15, 16, 18.
2 Statement, §§16, 58.
3 Statement, §7.
1.2. Use of vague and unbinding language

The language used throughout the Statement is still too often vague and unbinding, leaving large discretion to the Bank in the identification and implementation of the social and environmental principles and standards. The binding force of the Statement itself is not clearly enough affirmed.

Recommendations

- The Statement must include a clear, unequivocal and strong commitment by the Bank to abide by the principles and standards set out and to be held responsible if they are not respected.

- The Statement must avoid the use of terms such as “may” or “should” and use instead binding language. For instance, §8 should be drafted in the following way: a failure by the promoter to take proper corrective action “will have financial and legal consequences according to...” rather than “may”, as this should not be an option. The same comment applies to §§49 (“should”), 50 (“should”, “may”), 52 (“shall”, “would be”), 53 (“should”).

- The Statement should avoid the use of vague or general language and instead set out clear, objective and binding criteria:
  - §5: the sentence “where this can be achieved in a socio-economic cost effective way” should be deleted;
  - §6: the “ethical or moral reasons” for which the Bank may decide not to finance a project should be formulated more clearly and in a more binding way;
  - §8: the reference to “poor project performance” should be replaced with “failure to respect the social and environmental principles and standards”;
  - §8: the expression “timely corrective action” should be clarified through the setting of clear time frames;
  - §§15, 56: the reference to “socio-economic benefits” that can justify lowering social and environmental standards should be avoided or at least defined according to clear and objective criteria;
  - §16: the use of terms “should”, “timely”, “relevant”, “meaningful” should be accompanied by clearer and binding criteria;
  - §24: the sentences “where such impacts are unavoidable”, “impacts that cannot be fully mitigated” are too vague and leave too much discretion to the Bank and the promoter. Projects should be deleted or defined according criteria;
  - §30 the sentence “the Bank reserves the right to apply a phased approach to the implementation of its standards” is too vague and leaves too much discretion to the Bank; it should be clarified and based on objective standards;
  - §36: the possibility of phasing should be more strictly framed, according to clear and objective criteria;
  - §37: expressions such as “if practical and feasible” and “lower standards and/or a phased approach should be justified” are too vague and should be deleted as nothing should justify the application of lower standards. At least, such possibility should be strictly defined and depend on clear, objective criteria set out in the Statement;
  - §49 language such as “acceptable resettlement action plan”, “should”, “meaningful”, “appropriate”; §50 “pay special attention”; §51 “affected”, “acceptable indigenous peoples development plan”, “reflect”; §52 “contribute”,


“promote”; §53 “risks”; “aligned with”, “avoid or minimize”, “promote”, “reduce” remains vague and should be formulated in a more binding way;

- §56 a derogation should be permitted only in specific and clearly defined cases, based on objective and pre-established criteria;
- §59 references to “as early as possible”, “timely resolution of conflicts”, “meaningful public consultation and timely disclosure of appropriate information in a suitable form should be undertaken by the promoter” should be clarified into clear time frames.

- In particular, derogations to environmental, social or human rights standards should not be left to the discretion of the Bank and should be restrictively applied. One way to tackle this issue could be to use the principle of proportionality as developed in the case-law of the European Court for Human Rights in relation to restrictions to certain rights.4 This could be the case, for instance, when weighing the social and/or environmental impacts of a project against its “socio-economic benefits” (§15 of the Statement) -keeping in mind that certain environmental or human rights can never be subject to restrictions.

- If the Bank fails to clarify its obligations, then the Statement should be interpreted extensively (principle of extensive interpretation).

1.3. Uncertainty of applicable standards

1.3.1. General

Reference is made throughout the Statement to a number of texts, in European law, international law (including soft law), and the Bank’s own internal documents. Sometimes it just refers to “a number of EU laws” (§26), “a number of other EU environmental laws” (§59), “EU directives” (§32), “principles and standards of relevant international environmental conventions incorporated into EU law” (§34) without specifying which texts.

Again, the Statement is very confusing as it does not set out clearly whether and to what extent the Bank is bound by these various texts. This creates uncertainty for the public and affected persons, but also for the promoter who needs to know clearly which texts and standards to apply. It is also a matter of legal certainty for the Bank itself, which risks being held liable by the promoter or by third parties due to this uncertainty and/or in case of damages.

With regard to human rights, paragraph 28 of the Statement refers to the Charter of Fundamental Rights of the European Union and the UN Universal Declaration of Human Rights, but contains no binding commitment to ensure their application.

This is further exacerbated by the use of vague and unbinding language such as “refers to” or “reference” (§§21, 30, 35), “primary source” (§§21, 30), “derived from” (§30), “based on” (§47, 54), “reflects” (§§28, 51, 54, 58).

4 A restriction is valid if: (i) it is prescribed by law; (ii) it pursues a legitimate aim ; and (iii) it is necessary in a democratic society. There must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. See e.g. European Court for Human Rights, *Handyside v. the UK*, Application no. 5493/72, 7 December 1976, §§42-59; European Court for Human Rights, *Observer and Guardian v. the UK*, Application no. 13585/88, 26 November 1991, §§48-71.
Recommendations

- The Statement should provide a list of relevant applicable texts and express a clear commitment to abide by the principles and standards set therein.\(^5\) Where a text does not apply in its entirety, the Statement should provide specific reference to the applicable provisions. Since environmental law is constantly developing, this list should be non exhaustive. The purpose is simply to enable stakeholders and affected persons to identify quickly and rely upon relevant texts during public consultation and/or when using complaints mechanisms.

- The Statement should, in addition, refer to and apply other relevant texts, such as the OCDE Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the European Convention of Human Rights.

1.3.2. Application of EU Law by the Bank

The relationship between the Statement and EU law, and the extent to which the Bank is bound by EU law, is not entirely clear throughout the Statement.

The EIB is a Community body established and endowed with legal personality by the EC Treaty.\(^6\) It is intended to contribute towards the attainment of the European Community's objectives and thus by virtue of the Treaty forms part of the framework of the Community.\(^7\) The European Community is based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the EC Treaty.\(^8\) As required by Article 9 of the EC Treaty and by Article 1 of the EIB Statute, the Bank must perform its functions and carry out its activities in accordance with the provisions of the Treaty. It is further bound by EC regulations applicable to EU institutions and bodies.\(^9\) The Statement should make this clearer.

The application of EU law is especially problematic with regard to directives, as the Statement at footnote 31 recalls that directives need to be transposed into domestic law in order to be applicable.

Recommendations


\(^6\) European Court of Justice, *Commission v. BEI*, C-15/00, 10 July 2003, §§98.

\(^7\) European Court of Justice, *Commission v. BEI*, C-15/00, 10 July 2003, §102.

\(^8\) European Court of Justice, *Commission v. BEI*, C-15/00, 10 July 2003, §75.

\(^9\) See European Court of Justice, *Commission v. BEI*, C-15/00, 10 July 2003.
• The Statement should expressly acknowledge that the Bank is bound by EU law. It should furthermore clearly identify EU legal texts and provisions that are relevant to the Bank’s activities. Again, because EU law is constantly developing, this should not be an exhaustive list. Such a list would help identify the relevant texts and would expand with the development of EU law.

• At §30, the Statement should expressly require the application of EU law, rather than refer to it as the “primary source”. The standards as identified during project preparation, appraisal and negotiation must fully comply with EU legal requirements. The Bank’s reservation regarding the application of a phased approach must be framed by clear and objective criteria and not left to its discretion. Further, the Statement should set out mechanisms to ensure that the relevant standards are identified and implemented.

• The Statement should clarify the position of the Bank with regard to directives that have not been transposed into the law of the concerned state or to their application to projects outside the EU. As a rule, the Bank should not apply lower requirements than those contained in EU directives. Because of the nature of the Bank’s activities, and because there is no transposition process internal to the EIB, the Bank should commit itself to abide by EU directives. The Bank should also clarify how and to what extent, concretely, it will implement directives that are drafted in terms of states obligations and adapt them to its own activities and decisions.

• With regard to social standards in EU member states, the Bank should not assume that EU social requirements are correctly implemented in Member States. The presumption set out in §46 of the Statement should be reversed. Whenever the Bank intends to finance a project in an EU country, it must first verify that domestic law is consistent with EU law for the purpose of that project. In particular, the fact that the Commission has opened against the Member State where the project takes place an infringement procedure for lack of transposition of the relevant environmental directives should at least call the attention of the Bank and justify caution.

1.3.3. Projects outside the EU

The Statement makes a distinction between standards in the EU and standards outside the EU. However the scope and extent of this distinction remains unclear.

Furthermore, by suggesting that it will apply lower standards outside of the EU, the Bank sends a dangerous message to all promoters and states interested in EIB funding. Around fifteen percent of the Bank’s loans are directed to projects outside the EU, with sometimes extensive environmental and social impacts. Nothing justifies the application of lower requirements. On the contrary, by accepting to apply the same standards to all the projects it finances, the Bank would bring consistency to its lending policy.

This is especially true with regard to human rights. It is highly unacceptable that an EU body finances with public money projects that would not comply with basic texts such as the EU Charter of Fundamental Rights.

Recommendations
• Outside the EU the application of EU law should be the general rule. Derogations should be permitted only in specific and clearly defined cases, based on objective and pre-established criteria. Grounds for derogations should be interpreted in a restrictive way and in accordance with the principle of proportionality as developed in the case-law of the European Court for Human Rights.

• Human rights (§28 of the Statement): the EIB should commit itself to ensure that all the projects it finances respect fundamental rights as set out in the Charter of Fundamental Rights, the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

• General environmental standards (§§29-33 of the Statement): Sherpa understands that these general environmental standards apply to projects both inside and outside the European Union. The Statement must acknowledge it expressly.

• Environmental standards (§37 of the Statement): the Bank should make a stronger commitment to apply EU environmental law to projects outside the EU. References to “if practical and feasible” or to the possible application of “lower standards” should be deleted. If the application of EU standards is not practical or feasible, then the Bank should not finance the project rather than lower its standards. At the very least, if the Bank were to apply lower standards, the Statement should set out clear and objective criteria that could justify lower standards, rather than leave it to the discretion of the Bank and the promoter. Again, grounds for lowering standards should be interpreted in a restrictive way and in accordance with the principle of proportionality as developed in the case-law of the European Court for Human Rights.

• Social standards (§§47-53 of the Statement): the Statement must identify the “principles and standards of international human rights” it refers to (§52). The principles identified in the following paragraphs are too limited and set out in terms that are too vague and unbinding (§49 “acceptable resettlement action plan”, “should”, “meaningful”, “appropriate”; §50 “should”, “pay special attention”, “may”; §51 “affected”, “acceptable indigenous peoples development plan”, “reflect”; §52 “shall”, “would be reached”, “contribute”, “promote”; §53 “risks”; “should”, “aligned with”, “avoid or minimize”, “promote”, “reduce”). There again, the Bank should be bound by relevant texts such as the Charter of Fundamental Rights, the UN Universal Declaration of Human Rights, the UN Declaration on the Rights of Indigenous People, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as well as all relevant ILO texts. Again, this would enable all stakeholders, including the promoter, to know with certainty which standards to apply and rely upon.

2. THEMATIC COMMENTS

2.1. Environmental and social assessment (§§14, 16-19 of the Statement)

Sherpa acknowledges the improvements in the second draft. In particular, Sherpa welcomes the Bank’s commitment to require an environmental assessment that relates to the entire project and its sphere of influence.
However, again, the Statement relies on vague and unbinding language, and fails to address crucial issues.

Environmental and social assessment must be done in a fair, independent and comprehensive manner so as to foresee all the social and environmental consequences that a project is likely to have. Only upon proper and full social and environmental assessment can the Bank decide whether or not to finance a project. If done correctly, this can help prevent many negative consequences for the environment and/or the local population.

Preparation of environmental and social assessment should not be left to the sole or main responsibility of the promoter, whose primary interest lies in the project and its own economic benefits. The commitment that the Bank will provide assistance and supervision to this process is not sufficient, considering the lack of qualified staff in social and environmental matters within the Bank.

**Recommendations**

- The issue of environmental and social assessment should be dealt with in a separate section and not left in the preamble.

- The assessment should cover both social and environmental matters - the Statement should refer to “environmental and social assessment” instead of “environmental assessment”.

- The environmental and social assessment of a project must be prepared by an independent and competent authority. One way to achieve this could be for the Bank to entrust a third person with that task on a case by case basis - it could be a private consultant, an NGO or a public authority specialised in social and environmental matters. Another possibility could be to set up, for each project, a bipartite commission responsible for preparing the environmental and social assessment, and composed of representatives of (both local and international) civil society on the one hand and representatives of the promoter on the other hand.

- The Statement should provide more details regarding the environmental and social assessment. Again, it is not enough for the Statement to refer to the Handbook. The main obligations of the Bank must be set out in the Statement itself, and the Handbook must comply with the Statement in this regard.

- At paragraph 17 the expression “in pursuit of the objectives” of its EIB Public Disclosure Policy should be replaced with “in accordance with”

- The Statement should avoid the use of vague language such as “may be justified” (§15), “should” (§§16, 17), “timely” (§16), “relevant” (§16), “meaningful” (§16), “may” (§17) and instead set out clear and binding criteria or time frames.

**2.2. No financing policy** (§§6, 8, 20, 37-38, 56, 63 of the Statement)
The identification of circumstances where the Bank will not finance a project or will stop financing a project is very important, as it gives credibility to the Bank's commitment to ensure respect for the environment and for social and human rights.

However, there again, the Statement lacks in clarity and strength. According to paragraph 6 of the Statement, “the EIB will not finance projects that do not meet its environmental and social requirements as described in the Statement”. Yet, it is not clear how such policy will be implemented in practice, as some paragraphs suggest that if a project does not comply with the requirements set out, the Bank will lower the standards rather than not finance the project (see e.g. §56). This is especially true for projects outside the EU (see e.g. §§37-38).

**Recommendations**

- All paragraphs related to projects that the Bank shall not finance should be dealt with together and in a separate section (not just in the preamble)
- The Statement should develop clear and binding criteria according to which the Bank cannot finance a project
- At paragraph 6, the sentence “in force at the time” should be deleted. The Bank should not finance projects that do not comply with EU environmental and social law.
- The Statement should include clear provisions requiring the Bank to stop financing a project and/or take corrective actions in the event a project fails to meet the requirements in the Statement. The language in paragraph 8 in this respect is too vague:
  - The reference to “poor project performance” should be clearly defined so as to encompass all instances of failure to respect the EIB social and environmental principles and standards.
  - Delays should be specified for taking “timely corrective action”.
  - The Statement should explicit what are the “legal and financial consequences” incurred by the promoter, and in which circumstances.
  - The Statement should also clearly express that in case of serious violations of environmental, social or human rights during implementation or operation phase of the project, the Bank will (and not just “may”) take sanctions and/or stop financing the project.
- The Statement should clearly set out the responsibility of the Bank itself in case of non-compliance – that is when a project that does not meet the Statement requirements is being financed or continues to be financed by the Bank
- At paragraphs 37-38 the references to “practical” and “feasible” and to the possible application of lower standards should be deleted. If application of EU standards is not feasible or practical, then the Bank should not finance the project rather than lower its standards, as affirmed in paragraph 6 of the Statement. At the very least, derogations should only be permitted based on objective and narrowly pre-defined criteria.
- At paragraph 56, the possibility of financing a project that threatens cultural heritage should be excluded. If there is no feasible alternative, then the Bank should not finance the project rather than lower its standards. At the very least, derogations should only be permitted based on objective and narrowly pre-defined criteria.
2.3. Participation of civil society (§§57-59 of the Statement)

Sherpa welcomes the comment at paragraph 14 of the Statement background acknowledging “the greater role that might be played by civil society organizations”. However, the Statement says little on the ways for civil society organisations to play this role within the EIB framework. Furthermore, Effective public participation supposes that the public is informed at an early stage of the project cycle. At the moment, the Bank is only required to render public its decision to finance a project before its approval by the Board of Directors, which means that it is usually too late for the persons affected or CSOs to influence the Bank's decision-making in relation to a project. The Bank's intention to finance a project should be published as early as possible, and not once the decision has de facto already been taken.

Recommendations

- The Statement should include detailed provisions on the means by which civil society organisations can be involved in the preparation, negotiation, appraisal and implementation of projects financed by the Bank.

- In reference to Aarhus, the Statement should clarify which provisions of the Aarhus Convention and of the Aarhus Regulation apply to the Bank. It should also give details as to how, concretely, the Bank will implement its obligations in terms of public participation within its own decision-making process. Public consultation with CSOs should be organised early in the project cycle by the Bank itself and not only by the promoter.

- Likewise, the Statement should clarify how, concretely, the Bank will implement Article 6 of the EIA Directive on public participation. The Statement should include specific provisions enabling members of the public (including CSOs) to participate early in the Bank's own environmental decision-making procedures.

- The public should be informed of the Bank's involvement in a project in a reasonable time, so as to be able to raise concerns when they can still be addressed and effectively influence the decision-making process. The possible involvement of the Bank in a project should be made public at the pre-appraisal stage, or at the latest when the Directorate General for Lending Operations launches the project appraisal procedure, on the basis of the file compiled by the promoter. CSOs should further be given an effective opportunity to participate in the project appraisal, when their environmental and social expertise can be best used by the Bank in making its decision.

2.4. Respective responsibilities of the Bank and the promoter (§§2-4, 7 of the Statement)

The Statement says little on the repartition of responsibilities between the Bank and the promoter, and instead refers to the Handbook as a whole for details. The Statement seems to shift the responsibility for fulfilling the requirements and legal compliance onto the promoter. Nowhere in the Statement is it referred to the responsibility of the Bank itself.

Yet the repartition of responsibilities between the Bank and the promoter is crucial to the implementation of the Statement. In case of non-compliance, it is essential that affected
persons know to whom to turn and whose responsibility to invoke when using complaint mechanisms. It is also essential that the Bank takes its share of responsibility when it finances, with public funds that have been entrusted to it, a project that has serious social or environmental impacts.

**Recommendations**

- The issue of respective responsibilities of the Bank and the promoter should be dealt with in a separate section of the Statement rather than in the preamble.

- The Statement should contain a clear statement on the principle and extent of the Bank's responsibility whenever a project fails to meet the requirements set out. The Bank has an obligation of means to ensure that the promoter complies with its environmental and social standards and principles.

- The fundamental principles and obligations in terms of responsibilities of the Bank and the promoter, including reporting and monitoring mechanisms, should be set out in the Statement itself. Further details can be developed in the Handbook, in accordance with the Statement.

- The monitoring obligations of the Bank should be spelled out in clearer and more binding terms.

- The content of the Finance Contract between the Bank and the promoter should be regulated by the Statement. The Statement should expressly require Finance Contracts to comply with the Bank's Environmental and Social Principles and Standards, through a specific clause in the contract. This clause would give the Bank the means to exert its influence on the promoter and oblige him to comply with its environmental and social standards and principles. It would thus allow the Bank to fulfil its own obligation of means.

**2.5. Remedies (§§60-61 of the Statement)**

The extent of the Bank's liability need to be clearly defined, as a matter of legal certainty for the Bank itself.

The scope of complaints mechanisms remains unclear and too narrow, and does not fully comply with the Bank's obligations under the Aarhus Convention and the Aarhus Regulation to ensure access to review procedures that provide adequate and effective remedies.

Both the Statement and the EIB Complaints Mechanism Policy should be amended so as to provide effective remedies to affected persons whenever a project financed by the EIB fails to comply with its environmental and social principles and standards.

In particular, §10.1 of the EIB Complaints Mechanism Policy (to which the Statement refers) states that “decisions concerning the investment mandate of the EIB, its credit policy guidelines or the EIB's participation in financing operations fall outside the scope of the present mechanism”. Depending on how this provision is interpreted, decisions of the EIB that are most likely to affect the environment as well as social and human rights could be excluded from the complaints mechanism.
The Statement refers to the procedure before the European Ombudsman. However, the Ombudsman is not a jurisdictional body and cannot oblige the EIB.

Finally, the Statement is silent on the issue of reparation.

**Recommendations**

- Remedies suppose that the EIB be liable in the event a project fails to comply with its environmental and social principles and standards. The Statement should include specific provisions expressly recognising the principle and the extent of the Bank's responsibility.

- The scope of remedies should be clarified and broadened:
  - The reference to “persons affected or perceived to be affected” in paragraph 60 of the Statement should be interpreted in accordance with Article 9 of the Aarhus Convention.
  - In accordance with Articles 2 §5 and 9 of the Aarhus Convention and with Articles 10 through 12 of the Aarhus Regulation, the Statement should explicitly include NGOs promoting environmental protection amongst the persons that may lodge a complaint.
  - In accordance with Article 9 of the Aarhus convention and with Article 10 of the Aarhus Regulation, the scope of the complaints mechanism should encompass any decision, act or omission of the Bank in relation to a project that fails to comply with the Statement.

- The Statement should be added to the list of EIB's Policy documents in Annex I of the EIB Complaints Mechanism Policy.

- Recourse to the European Ombudsman will only be effective if the Bank commits itself to abide by its decisions and recommendations. Such commitment should be expressed in the Statement.

- In accordance with Article 9 of the Aarhus Convention and in line with the Aarhus Directives, the Statement should include provisions guaranteeing access to a review procedure before the European Court of Justice or another independent and impartial body established by law, whose final decision shall be binding on the Bank. Such a procedure should permit to review the substantive and procedural conformity of the Bank's decisions, acts or omissions with the Statement.

- The Statement should further include provisions on reparation for persons affected by any decision, act or omission of the EIB in violation of the Statement.