

Public Consultation on the EIB Group's Environmental and Social Framework

Webinar on **Standard 6 – Involuntary Resettlement**

Friday, 2 July 2021

Summary of Discussion

Objective

The European Investment Bank (EIB) is hosting a series of 13 webinars in the context of the public consultation on the EIB Group Environmental and Social Sustainability Framework (ESSF), open from 3 June to 6 August 2021. The overall objective of the webinars is to facilitate dialogue with stakeholders on the EIB Group Environmental and Social Policy (hereinafter “the Policy”) and Standards.

On 2 July 2021, the EIB hosted a webinar on Standard 6 – Involuntary Resettlement. The Standard outlines the responsibilities of promoters to avoid involuntary resettlement in the first instance; and to minimize and mitigate where involuntary resettlement cannot be avoided, with a view to improving or at least restoring their socioeconomic and cultural condition.

Introduction

The EIB welcomed the 48 webinar attendees (35 external, 13 EIB Group staff) and explained the webinar housekeeping rules and arrangements to ensure an effective discussion, noting that participant statements would not be attributed to individuals or organisations in the summary report and any comments made during the discussion would not be considered as formal contributions. The EIB invited participants to submit their written contributions to the public consultation by 6 August 2021 on the public consultation [website](#).

The EIB delivered a [presentation](#) on Standard 6: Involuntary Resettlement. It summarized the background to the public consultation, the ESSF currently in force, and the main changes to the Standard under consideration. The floor then opened for discussion.

Discussion

The discussion began with a question from a participant from a multilateral development bank (MDB) who asked how the EIB will ensure that **clients enforce the improvement of displaced persons' livelihoods**. His experience was that clients do not follow up on this and are more concerned with profitability. Responding to the question, the EIB acknowledged that this can be a very challenging area. Some promoters understand the Standards and are willing to put additional resources towards improving livelihoods following resettlement. The EIB acknowledged that despite the willingness of some promoters and the conditions that the EIB can include in finance contracts, the real challenge occurs during implementation. The EIB also agreed that once compensation has been provided, there is a tendency to neglect the follow-up and support that the promoter should give Project-Affected Persons (PAPs). To make sure this does not happen, the EIB is strengthening the monitoring requirements of promoters at the contractual level and through the introduction of mid-term audits, to determine whether improved livelihoods is being achieved. Through monitoring and third parties, the EIB also hopes to provide sufficient support and resources to the project promoter so that they can achieve this objective.

A representative of a human rights organization asked **which experts in the areas of resettlement, vulnerable groups and Indigenous Peoples the EIB engaged with when writing the Standard** as it is a very complicated and nuanced area. The panel answered that the EIB has a strong in-house team including social development specialists with many years of collective experience working with different groups as well as on-the-ground experience. In addition, the EIB has reviewed the Standard in the past and taken the conclusions and recommendations on board, such as discussions with NGOs on land tenure rights. Specific consultations, for example in Kenya, had taken place with promoters and EU delegations. In general, the EIB has complemented their in-house expertise with consultations in a constant learning process to improve the Standard.

A participant from an MDB asked **if the EIB would withdraw funding if a promoter fails to comply with the requirements of Standard 6**. The EIB responded that they have different mechanisms at their disposal to encourage the promoter to comply with the Standard. Firstly, EIB will try to engage with the promoter so that they understand the complaints and encourage the promoter to redress the situation. If the promoter does not cooperate, the EIB has a number of contractual instruments at its disposal. These include stopping disbursement (if funds are not fully disbursed) or triggering a contractual default and forcing early repayment of the funds.

A representative of an NGO referred to the earlier point from the EIB regarding the **consultations that took place in Kenya** and asked for more specific information on the conclusions that had been taken into account when drafting the Standard. The EIB told the representative that the consultation focused on the new land rights law in Kenya. It was led by the Rights and Resources Initiative and organized with the EU delegation and EIB office in Kenya. The consultation helped to examine and understand the issues around land tenure and the implications of the new law. Local communities and promoters were also able to present their views on the new law and attend the consultation.

The next participant posed a question about the **Livelihood Restoration Plan (LRP)** and its formulation in the Standard. She noted that the plan was presented in the form of two documents and asked for clarification as to why this was the case. The EIB welcomed the feedback, which presumably referred to Annex 1b of the revised Standard 6 which addresses both the Resettlement Action Plan (RAP) and Livelihood Restoration Plan. The EIB would consider clarifying what should be in the content of a RAP and the recommended content of a LRP.

A representative of an NGO asked how the EIB intervenes in favour of **PAPs whose affected belongings are compensated at a lower rate than the market rate**. The panel explained that the EIB tries to avoid a situation where PAPs receive inferior compensation. There is particular focus on how the compensation is calculated when it is presented in a RAP and information on the market price can be requested by the Bank. An evaluation report informs the Bank as to whether the compensation scale needs updating. In the event of the Bank having concerns, they can raise them with the project promoter but this can delay the project as the compensation scale is usually approved at the ministerial level of the host country. If a PAP is not satisfied with the level of compensation received, then they will also have access to a grievance mechanism. The mechanism is free of charge and available to every PAP who raises their grievances. A second evaluation of the compensation is made. The PAPs also have the right to use the host country judicial system and complain formally about the evaluations.

Another representative of an NGO asked the Bank to expand on what is meant by **“following the principles of European Union (EU) legislation”** and why clients could not simply be asked to follow EU legislation for projects based outside of the EU. The EIB answered that they cannot apply EU legislation to projects based outside of the EU as EU legislation is only binding within the EU. This means the EIB can only implement the principles of EU legislation and the Environmental and Social Standards. The EIB also added that land acquisition and compensation within the EU are subject to the EU Subsidiarity Principle and are integrated into the national planning laws of the individual EU member states. This is not the case for

countries outside the EU. The EIB also confirmed that the standards it applies outside the EU are not weaker than those applied in the EU.

A participant from an NGO next asked if the EIB expects feedback from the **accountability mechanism**. The panel confirmed that the EIB receives regular feedback and recommendations from the internal independent complaints mechanism. In turn, the Bank tries to reflect these recommendations and it is considered an important learning tool that has fed into the review process.

Another participant noted the **differences between this Standard and the 2018 Standard** such as the decision to continue to offer cash rather than in-kind compensation and wondered why this was the case. She also added that the 2018 handbook had detailed several important aspects that were now removed from the new Standard 6 and she felt there was a narrowing of its scope. The EIB thanked her for this important feedback and felt it was worth reflecting on whether the revised Standard conveys the right message. The EIB confirmed that the new Standard does also include in-kind compensation but cash compensation is also included because there are certain situations in which cash compensation is the preferred option. The Bank tries to provide both options but with a preference for in-kind compensation. Regarding the narrowing of scope, the EIB did not agree that they were narrowing the scope. Rather there has been a redistribution or simplification of the information to the project promoters. The EIB also added that many of the details considered to have been removed are still provided in the guidance notes on the Standard. The EIB's intention was never to dilute or weaken the Standard but quite the opposite. The Bank invited the participant to raise these important points in their written feedback.

A participant noted that while the completion audit is now a necessary item of delivery, it was not clear whether **intermittent LRP audits** take place to ensure a timeline of measurable data. The EIB responded that one of the challenges for the EIB and other IFIs concerns the project timeline, i.e. knowing when livelihoods are restored sustainably and PAPs remain on a positive trajectory. The Bank has not gone into detail on timelines and required audits in the Standard because it intends to do so in the accompanying guidance notes. The EIB mentioned that in the new Standard there is a sentence stating that when significant involuntary resettlement occurs, the promoter shall reach out to third parties to carry out mid-term reviews or audits and this was a lesson learnt from past projects.

A representative of an NGO asked about repercussions for the client, in the **event of forced eviction**. The EIB stated firstly that it takes the issue of forced evictions extremely seriously. In the new Standard 6, forced eviction represents a gross violation of human rights. In the rare cases where eviction is unavoidable, the eviction should be in full compliance with the provisions of the international human rights instruments and national laws. Evictions should not result in homelessness and adequate compensation must be provided before it takes place. Furthermore, the project promoters are required to inform the EIB before any eviction takes place and document that the conditions were in line with the UN Human Rights Principles. The accompanying guidance shall include further detail on the application of these principles. The EIB can make use of contractual clauses to address human rights considerations during the implementation of the project and this enables the EIB to act on concerns that are reported by the public (including NGOs). The information provided by NGOs and other types of civil society organisations (CSOs) is extremely valuable and welcomed by the EIB.

An NGO asked why **the Standards for promoters operating outside the EU could not be made equal to those operating inside the EU**. The panel clarified that the EIB does apply the Standards and principles contained in EU legislation outside the EU, but the full EU directives cannot be applied outside the EU, as they contain administrative regulatory actions that can only be applied within the EU. The EIB gave some examples of how the EIB has translated EU requirements into requirements for project promoters outside the EU (e.g. access to information, access to justice, fair compensation, enforcement of human rights and legitimate land tenure rights). The EIB felt that the requirements for promoters outside the EU are much more stringent than inside the EU. Furthermore, the EIB pointed out that special attention is given to people without formal claims to the land that they occupy. In developing countries it is sometimes the case that

people's claims to land are not always acknowledged by the state. Under the EIB Standard, these issues are covered and respected.

A participant noted that the **phrase 'broad community support'** was no longer in the Standard and asked what the EIB meant by meaningful consultation. The EIB noted that this question was raised in a previous webinar (Standard 2) and confirmed that broad community support has been replaced with the requirement of meaningful consultation. The EIB reiterated that this change came from recommendations received from CSOs in the past as the term broad community support was open to interpretation. Following the same direction as other peer institutions, the switch to meaningful consultation has allowed for a term that is more accurate and easily interpretable. The EIB referred to the definition of meaningful consultation in Standard 2 and said they hope this definition is comprehensive enough but further feedback is welcome.

A participant asked the EIB to clarify in which conditions **forced evictions** would be allowed. The panel clarified that the EIB does not tolerate forced evictions and there are no circumstances in which the Bank will allow forced evictions. There are, however, evictions, which are separately defined, foreseen by law and seen as unavoidable. When evictions are unavoidable, the project promoter must provide justification to the EIB and demonstrate the PAPs' right to information, consultation and meaningful participation have been upheld. Evictions should not result in homelessness and adequate compensation must be provided before it takes place.

The representative of an NGO asked if the EIB could consider **more immediate actions in cases of clear human rights abuse**. She noted that engagement takes time and real repercussions on people can occur before issues are resolved. The EIB noted that it is difficult for the Bank to always intervene immediately but it tries to do so as quickly as possible, through the mechanisms available to it. The Bank will promptly inform both the borrower and the promoter of its concerns and the consequences their actions entail. As explained earlier, the actions the EIB can take are linked to the finance contract. The EIB also relies on other mechanisms such as the grievance mechanism and on the ground staff who can establish communication channels with the promoter.

A representative of an NGO asked how the EIB ensures the client has **differentiated between "squatters" and Indigenous People**, who struggle with landlessness (especially if they are migratory). The EIB pointed out that confusion between the two groups rarely occurs. The new definition of indigenous groups has been streamlined in Standard 7. Squatters are recognized as a vulnerable group whereas the status of Indigenous Peoples is determined by the criteria outlined in Standard 7. Both squatters and Indigenous Peoples are regarded as having different types of vulnerability. If there were project impacts on squatters then they would be provided with resettlement assistance as well as compensation for any investments that they had made on the land. They would not be compensated for the land as they have no formal or informal claim to it. Indigenous Peoples, on the other hand, have a very specific status under international human rights law and the right of access to information and meaningful consent.

A participant asked what channels are used to **communicate** with affected communities, and how the fact that the EU does not have its own **involuntary resettlement policy** works with the national regulations of host countries. Answering this question first, the EIB clarified that it has an involuntary resettlement policy that integrates the principles of key EU legislation when it comes to the respect of human and basic rights that may be affected through involuntary resettlement processes. The EU does not have a specific directive or legislation pertaining to land acquisition and much of the regulations are left to the discretion of the individual member states. There are however a number of principles and key aspects that are captured by the EIB Standards. Regarding the communication question, the EIB pointed to a number of requirements for the project promoter to inform the PAPs in ways that are culturally appropriate and informative. These are briefly referenced in Standard 6 but are expanded on in detail in Standard 2 (Stakeholder Engagement). The Bank acknowledged the challenges of reaching out and getting information across to the PAPs. This is especially the case when the EIB is working with public sector promoters in developing countries, and

where the EIB will often provide technical assistance and resources to support and strengthen the promoter's capacity to meet the requirements of the EIB Environmental and Social Standards.

An NGO representative asked why in bullet 1 of **Annex 1 of the Standard** the EIB now asks only for a "brief" description of the resettlement process. The EIB informed the participant that there was no specific reason for this change and they would consider revising it so as not to give the impression that they were weakening the text. The EIB encouraged the participant to submit this point in their written feedback.

The same NGO representative also urged the EIB to be mindful of the intersection of **reprisals** against human rights defenders, judicial harassment and Indigenous Peoples as the EIB's new definition is problematic. The EIB said they are acutely aware of the increased threats to Indigenous People and environmental activists, especially female indigenous environmental activists. The EIB has been engaging on this topic and has tried in this new framework to strengthen the language and make a clear statement on zero tolerance towards all forms of reprisals.

The NGO representative asked if the panel could elaborate on which **cultural conditions** this Standard intends to cover. The EIB acknowledged that they have not put a footnote or fixed definition for "cultural conditions" and this could potentially be a point to address in the accompanying guidance. Generally when speaking of cultural conditions, the EIB is referring to the languages spoken by PAPs, their religious observances, traditions, customs, accepted and established gender roles, occupations, dietary practices, intellectual or leisure time pursuits and way of life.

A participant asked how the EIB will **indicate if the physical displacement is 'significant'**. The term was felt to be imprecise, and any displacement should be accompanied by a RAP. The EIB clarified that when a project leads to involuntary resettlement and doesn't specify the significance of it, then resettlement documents shall be prepared by the project promoter. The Standard describes the required resettlement documents, including resettlement plans for projects leading to significant physical displacement. The thresholds for 'significant' remain the same as before and a RAP must be prepared. This does not mean that when there is an involuntary resettlement that is not significant, the EIB does not request the project promoter to have resettlement documents. The EIB may not have called it a RAP but they do have requirements for the resettlement information. The Annexes of the new Standard outline the minimum information that the project promoters are asked to provide.

The next participant asked whether there are **project requirements** to disclose resettlement budgets, if the budgets are broken down in cost categories, and if reconstruction expenses are itemized. The same participant also asked if the 'calculation' of livelihood improvement is subject to economic feasibility analyses or income-level projections. The EIB responded that the RAP requires a budget and is disclosed. The EIB does not specifically require the project promoter to indicate how they arrived at the total budget for livelihood restoration or to conduct a socio-economic analysis. The EIB does however hope that because the RAP is being consulted along with the livelihood restoration activities then the project promoter will receive suggestions on how to perform them and this will address all the impacts that have been identified.

A question was raised as to whether an audit report upon completion of all resettlement activities is a **condition for the disbursement**. The EIB clarified that this is not necessarily a condition for disbursement because the Bank cannot always have a timeframe for the implementation of the RAP. However, it can be an undertaking especially for specific RAPs or LRPs that are implemented over the longer term. The EIB Standards are always part of the financial contracts but it is more difficult for the audits to be considered a 'condition precedent'.

Concluding remarks

The EIB thanked participants for their constructive participation, which allows the review of the ESSF to benefit from the expertise of a wide range of individuals and organisations. The EIB reiterated the

invitation to submit written contributions by 6 August 2021 on the public consultation [website](#). After this date, the EIB will start publishing the written contributions received. 15 working days ahead of the Board of Directors meeting during which the revised ESSF will be discussed, a draft revised EIB-ESSF, reasoned responses to the contributions and a draft consultation report will also be published.