

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

### Webinar on **Standard 7: Vulnerable Groups and Indigenous Peoples**

Monday, 5 July 2021

#### Summary of Discussion

##### Objective

The European Investment Bank (EIB, the Bank) 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 5 July 2021, the EIB hosted a webinar on Standard 7: Vulnerable groups and Indigenous Peoples. The Standard outlines the responsibilities of the promoter in terms of assessing, managing and monitoring project impacts, risks and opportunities related to Indigenous Peoples as well as persons or groups that are vulnerable, marginalized or discriminated against due to their socioeconomic characteristics.

##### Introduction

The EIB welcomed the 52 webinar attendees (38 external, 14 EIB Group staff), 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 7: Vulnerable Groups and Indigenous Peoples. 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 Standard 7 discussion kicked off with a question from a representative of a non-governmental organisation (NGO), who asked how the section on '**vulnerable groups**' differs from the requirements set out in Standard 1. She asked if the identification and assessment of impacts on vulnerable groups ought to be integrated into an Environmental and Social Impact Assessment (ESIA). The EIB confirmed that this is the case, and clarified that the two sections are meant to complement each other. The reason the EIB has a standalone Standard that highlights the potential disproportionate impacts on groups with vulnerabilities based on their socioeconomic characteristics is because often is not detected during the regular impact assessments. The Standard goes into more depth and further explains what the EIB means by vulnerabilities, what socioeconomic characteristics may be relevant, how vulnerable groups are identified and what measures are required to address the disproportionate impact on vulnerable persons and groups.

The participant asked the panel if, in cases where an **indigenous group is not considered "socioeconomically" vulnerable, the EIB no longer safeguards their indigenous rights**. The EIB responded this was not the case. The identification of Indigenous Peoples is not based on their socioeconomic vulnerability, which is covered by other parts of the Standard. Indigenous Peoples have

rights inherent to them irrespective of their socioeconomic status. Socioeconomic status in terms of socioeconomic vulnerability is not part of the identification criteria but rather a variable that is taken into account in designing plans to mitigate adverse impacts and promote access to benefits for affected Indigenous Peoples.

A representative from an NGO asked a question regarding the **specific requirements for projects located in the EU and potential candidate countries**. The representative referred to paragraphs 17 and 18 of the Standard, noting the requirement for the Environmental Impact Assessment (EIA) process to identify and assess the impacts on vulnerable groups. In her experience, the EIA process within the EU seems not to be very sensitive to the assessment of the impacts on vulnerable groups. Paragraph 18 seeks to mitigate this issue, but does not provide for a systemic integration of the assessment of impacts on vulnerable groups. The participant asked how the EIB will ensure the integration of the assessment of impacts on vulnerable groups in EU candidate countries. The EIB agreed that in the EIA processes in the EU the emphasis on vulnerable groups is not always present. However, the accompanying European Commission's Guidance for scoping for the EIA touches upon several aspects related to vulnerable groups. The level of emphasis put on these types of assessments will vary in practice from country to country. While it is the national competent authority in charge of the EIA processes in the EU, the project promoters can assist them in making sure the relevant aspects are covered. The EIB is aware that sometimes this is not the case, and if it identifies such gaps in its due diligence, it can require further handling of aspects relating to vulnerable groups in the ESIA as well. Paragraph 18 was introduced to give the EIB this ability to address any gaps.

A representative from an NGO representing indigenous communities in the Nordic countries expressed her appreciation to the EIB for adding 'Indigenous Peoples' to the title of the Standard and for acknowledging that there are Indigenous Peoples within the EU. She asked if the EIB could address the problems of **cumulative effects of encroachment on indigenous land rights**, as this is one of the biggest challenges that her NGO is currently facing. Her second question concerned the **strengthening of the language in paragraph 46**, which refers to building the capacity of Indigenous Peoples to contribute to the **Free, Prior Informed Consent (FPIC)** processes. She felt the need to acknowledge that there are power imbalances between the project promoters and indigenous communities. Finally, she observed that the revised Standard's references to FPIC focus more on the process and less on the content and the ability to say "no" to different project proposals. She asked the Bank to elaborate further on this.

Responding to the first question, the EIB noted that cumulative impacts are the most critical, as they incrementally do the most damage. The Bank explained that Standard 7 should be read in conjunction with Standards 1 and 2, as these are cross-cutting. In Standard 1, assessing the cumulative impacts of projects during development is critical, and the Bank's due diligence ensures that the assessment of cumulative impacts is appropriate. The Strategic Environmental Assessment also looks at the cumulative impacts on community lands. The EIB will look at the language of the accompanying guidance notes to see if it can be strengthened. For the second question, the EIB invited the participant to submit further detail in her written feedback. The Bank is aware of the issues relating to capacity building for indigenous groups affected by projects, and has included requirements for the support of capacity building in Standard 7. Regarding the last question, the EIB agreed there are difficulties with the assessment of the FPIC processes. The Bank looks at both the process and the outcome, and considers the process as important as the final agreement. If the process is not sufficiently developed then the final agreement may not be as relevant. Therefore, the Bank retains the right to request more information to make sure the FPIC process has been carried out through free, prior and informed consultations and good faith negotiations.

An NGO representative shared their experience with an energy project funded by the EIB in Nepal. He felt the project had failed to promote Standard 7 and consequently a complaint had been filed to the EIB Group Complaints Mechanism (EIB-CM) in October 2018. In its Conclusion Report of April 2021, the EIB-CM identified major weaknesses with the Bank and project promoter. Specifically, the EIB had failed to identify Indigenous communities and to require the promoter to carry out an FPIC process as well as an overall

stakeholder engagement. The participant encouraged the EIB to use its influence over the promoter to ensure the FPIC process takes place. Following this experience, the participant asked how the EIB could **demonstrate lessons learnt** in the new Standard, which he felt was currently not the case. The EIB said that it has learnt many lessons over the years and hopes those lessons are reflected in the new Standards. The Bank encouraged the representative to submit their written comments if they felt the EIB had failed to reflect this so they could take these comments on board. Concerning the immediate application of lessons learned, the EIB is in the process of addressing all major issues raised and is in discussion with the promoter over launching an FPIC process and overall stakeholder engagement. The EIB also noted that this was not the right forum to discuss the details of individual projects.

An NGO representative asked why the EIB decided to **define vulnerability in terms of socioeconomic characteristics**. She noted cases where a person can have a stable socioeconomic situation but remain very vulnerable. The EIB agreed with the representative and was not sure where the divergence was because the examples she listed are covered by the definition. Paragraph two of the Standard defines what is meant by socioeconomic characteristics and this is in line with Article 21 of the EU Charter of Fundamental Rights. Using the language of the Charter, the EIB has taken a human rights-based approach and this is integrated into all the Standards. However, the Bank welcomes suggestions on this topic via written feedback. The Bank explained that when talking about the socioeconomic characteristics, these are not necessarily referring to the economic status of the individual or group and the vulnerabilities vary depending on the context and the different socioeconomic characteristics.

A participant asked the EIB what safeguards to guarantee Indigenous People and ethnic minority rights were in place in a country where **Indigenous Peoples or ethnic minorities are not recognized by national laws** and the project promoter can interpret their rights in the national context. The EIB replied that the Bank has added in the screening criteria of the Standards a specific element stating that the EIB reserves the right to determine if the project may have potential impacts on Indigenous Peoples, in order to address this risk. This means the Bank can request additional information or expert input to determine potential impacts. The promoters can also be asked to seek additional inputs from appropriate specialists and the Standard stipulates that a promoter should seek the most reliable information and consult the pertinent indigenous groups.

An NGO representative asked the panel how the EIB determined that the **four 'characteristics' of indigeneity** had to all be present and what borrowers are practically supposed to do with **footnote eight**. Another NGO representative asked the panel to explain the justification for restricting the **definition of Indigenous Peoples**. The EIB responded that they did not see the definition as more restrictive and it was not meant to be interpreted as such. The current version of the Standard defines a long list of characteristics and says the Indigenous Peoples possess them to 'varying degrees'. This had caused confusion and was not easily interpreted. The Bank has sought to align with its peer international financial institutions (IFIs) such as the EBRD who share the definition and requirements for following the same characteristics. The EIB also acknowledges in footnote eight that some of the characteristics may have eroded or are less evident for some groups, providing flexibility as not all characteristics have to be met. While the four defining characteristics of indigeneity are typically the key ones for groups that would be considered indigenous, the Bank also recognizes that some of these characteristics are not as apparent for different historical reasons. In specific situations and project contexts, it would be important to receive inputs both from Indigenous Peoples experts and from Indigenous Peoples who may be affected by the project.

An NGO representative wanted to know why the **reference to the UN Declaration on the Rights of Indigenous Peoples** was removed from the FPIC section of the new Standard 7. The EIB clarified that the reference has not been removed and is included in footnote three regarding the objectives. The footnote refers to the International Labour Organisation (ILO) Convention 169 as well as the UN Declaration on the Rights of Indigenous Peoples. Because it is a footnote in this section, the Bank did not deem it necessary to refer to it further on throughout the Standard.

A participant next asked a question in two parts, (1) whether or not is there any **alignment between the Standard and the particular situation in a country** and (2) whether the **presence of Indigenous Peoples is assessed by the EIB**. The EIB responded that there are always gaps between any international standard and the context of a specific country or region. The EIB tries its best to involve local experts on Indigenous Peoples to help the Bank better understand that context and bridge any gaps. The EIB clarified that the Standards need to remain at a higher level of detail, but the Bank looks at each situation and context, and tries to take into account as much as possible the views and opinions of local and international experts. The EIB agreed that there needs to be some form of assessment of the presence of Indigenous Peoples. As part of the general EIA process, it establishes whether there are any Indigenous Peoples within the footprint of the project.

The final question concerned **the EIB's possible response if the client and the EIB do not identify Indigenous Peoples or vulnerable groups in the appraisal stage, but they are identified later in the project development phase**. The EIB explained that whilst this situation is unlikely to happen it is still possible that not all Indigenous Peoples or vulnerable groups are identified in the appraisal stage. It is very likely that they will be identified during the project implementation stage. The project-affected persons (PAPs) will always have the opportunity to raise their concerns with the EIB's grievance mechanism. The Bank retains the right to ask the project promoter to engage in dialogue and meaningful consultation with the groups that were not identified during the appraisals and to come up with corrective actions that are culturally appropriate when deemed necessary. The Bank and project promoter perform monitoring activities and the Standard encourages this to be carried out in conjunction with external parties who may be experts in the particular location or field, providing the opportunity for the promoter and/or the Bank to gain more knowledge of the situation. There are also instruments within the finance contracts of the Bank to enforce revisions and corrective actions by the promoter where necessary.

### 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.