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Ευρωπαϊκή Τράπεζα Επενδύσεων  
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Banco Europeo de Inversiones  
Banque européenne d'investissement  
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Európai Beruházási Bank  
Bank Ewropew tal-Investiment  
Europese Investeringsbank  
Europejski Bank Inwestycyjny  
Banco Europeu de Investimento  
Banca Europeană de Investiții  
Európska investičná banka  
Evropska investicijska banka  
Euroopan investointipankki  
Europeiska investeringsbanken

Mr Mark Fodor  
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Defenders in Development Campaign  
Coalition for Human Rights in Development

Sent by e-mail to: [mfodor@rightsindevelopment.org](mailto:mfodor@rightsindevelopment.org)

Luxembourg, 7 May 2020

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EIB – Public

**Subject: Change in reprisal risks under government responses to Covid-19  
Letter received by email on 16 April 2010**

Dear Mr Fodor,

We refer to your message of 16 April 2020 sent to Mr Werner Hoyer, President of the European Investment Bank (EIB), with regard to the change in reprisal risks under government responses to COVID-19. The President has asked us to reply and follow up with a call as needed.

As the world, and the European Union with it, has come under unprecedented strain due to the current pandemic and economic recession, the EIB is being called to reinforce its mandate to finance sound sustainable investments even further. We are indeed answering this call, as part of Team Europe, with the rollout of a comprehensive response to help sustain jobs and livelihoods in sectors most threatened by the economic and social impacts of the pandemic outside of the EU.

This immediate response to the call for action must however not be interpreted as our readiness to compromise on matters related to environmental and social sustainability. The EIB Environmental and Social (E&S) Standards and Procedures will apply as usual, as it is not foreseen to have any derogations for E&S requirements.

More generally about your request for introduction of strong contractual provisions requiring respect for human rights and EIB's E&S standards, allow us to reiterate that all our contracts signed for operations outside the EU contain by default provisions that deal with these matters. Depending on the requirements of specific transactions and the risks identified by the services of the EIB during their appraisal process, additional conditions may be established or derogations of standards conditions agreed. Default provisions include covenants, representations & warranties and information obligations regarding compliance with EIB's E&S standards as well as avoidance of coercive practices. Failure by the promoter to comply with any obligations under EIB's contracts would be considered a breach of contract that would entitle the EIB to suspend disbursements and eventually cancel commitments or even accelerate the repayment of the loans if no corrective measures are applied to EIB's satisfaction.

More specifically, the EIB typically requires borrowers outside the EU to report (1) any environmental or social claim raised or threatened against it; (2) any action or protest initiated or any objection raised by any third party or any genuine complaint received by the borrower in respect of any environmental

claim; (3) any non-compliance with any environmental or social standard and (4) any suspension, revocation or modification of any environmental or social approval. In case of non-compliance with EIB's E&S standards, EIB first tries to work with the promoter to address any shortcomings and establish compliance; cases of continued or serious breaches typically result in suspension of disbursements. Contract cancellation is foreseen for any kind of unlawful behaviour, which may include serious breaches of human rights if they are clearly linked to promoters' actions<sup>1</sup>.

Furthermore, we are well aware - and as you point out in your letter - that the worldwide social distancing and lockdown measures present a new challenge for active engagement and meaningful consultation with project stakeholders. Notwithstanding these difficult circumstances, EIB urges its promoters to uphold an open, transparent and accountable dialogue with project affected persons, communities, and other relevant stakeholders in an effective and appropriate manner. Therefore, the requirements for stakeholder engagement - of nature and extent that is commensurate with project's environmental and social impacts and risks - are maintained.

To address some of the new challenges and risks that EIB operations are facing in the pandemic context and to support its promoters in dealing with these, the EIB is currently developing a series of guidance notes for promoters that will serve a two-fold goal: (i) reminding promoters of relevant obligations under the applicable EIB E&S Standards; and (ii) providing publically available advice and resources to prevent the spread of the infection, address the socio-economic consequences of the outbreak and build resilience to future health crises. The guidance notes are expected to be published on the EIB website shortly, and will include a note dedicated to stakeholder engagement in EIB operations.

More specifically to the points raised in your letter:

- The EIB is advising its promoters to consider postponing active engagement with stakeholders should the project calendar allow that, or to explore alternative channels for enabling some public participation and stakeholder engagement activities in short term. Any chosen alternative channel, such as virtual meetings, written submissions via email or dedicated website, questionnaire-based surveys, online or phone in-depth interviews, ongoing dialogue via social media, should enable consultations to be implemented in a way that is sensitive to the local social, cultural and gender norms, and generally comply with the EU's data protection requirements.<sup>2</sup>
- The EIB is emphasizing that stakeholders must be able to engage freely and without intimidation with the EIB and its promoters in providing feedback and raising concerns. Hence, the safety and well-being of stakeholders should remain top priority for design of engagement activities in crisis times.
- In that sense, the promoters are advised that all stakeholder engagement activities should be planned and implemented in the way to prevent and address social stigma and discriminatory behaviours against persons perceived to have been in contact with the virus and against marginalised groups perceived as contributing to the spread of Covid-19.<sup>3</sup>
- The planning should also identify and address any potential risks of reprisals against anyone expressing their opinion about the EIB financed project in general and against human rights defenders and environmental activists in particular. This may entail considering further measures for ensuring safety and stakeholder protection in the engagement process, such as seeking a "safe space" for virtual or other types of consultations and safe means of communications through secure channels.
- In their project information dissemination efforts, the promoters are asked to seek to ensure that reliable, accurate information reaches all, by making it available in readily understandable and culturally appropriate formats and languages, including indigenous languages and those of

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<sup>1</sup> See the EIB's template contractual clauses on environmental matters here:

<https://www.eib.org/en/about/documents/eib-standard-contractual-clauses-on-environmental-information.htm>

<sup>2</sup> See more information on the EU General Data Protection Regulation (GDPR) here: <https://eugdpr.org/>

<sup>3</sup> As per [A guide to preventing and addressing social stigma associated with COVID-19 – World Health Organisation](#)

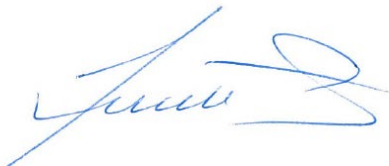
minorities, adapting information for people with specific needs, including the visually and hearing impaired, and reaching those with limited or no ability to read, or who lack access to the Internet and usual media sources.

- Furthermore, based on the EIB Group's Transparency Policy (EIB-TP), the EIB proactively publishes information on its website about the projects it is financing and gives the public the right to access information and documents held by the Bank. The EIB often engages with local stakeholders, both in the context of a projects' appraisal, monitoring, or following a formal complaint. During the EIB-TP review, we would also be interested to hear your views on how the EIB could make information more readily available for locally impacted groups.
- Finally, the EIB Group's Transparency Policy (EIB-TP) sets out the level of transparency for information on individual allocations made by financial intermediaries. The EIB has no contractual relationship with final beneficiaries of intermediated loans. It is the intermediary which carries the project's commercial risks and which signs the finance contract. Nevertheless, the EIB encourages the intermediary banks to make this information available. During the public consultation on the EIB-TP expected later this year, we would be interested to receive further comments on this.

As we continue strengthening our guidance and procedures to better address reprisals risks in context of EIB financed operations, we remain grateful for your views and invaluable insights into the challenges that human rights defenders and local communities face on the ground. We therefore welcome the continuation of this dialogue and remain available for further discussions and exchanges on this important topic.

Yours sincerely,

EUROPEAN INVESTMENT BANK



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