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## The “EU Climate Bank”?

A study on the environmental commitments of the European Investment Bank  
and the alignment with the right to a healthy environment

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# Summary

This thesis examines the relationship between international finance and environmental rights, and how the concept of sustainable finance has emerged as a response to climate change and the rapid transition towards a sustainable economy. Multilateral development banks (MDBs) are a key player in the transition to a green economy, contributing to 68% of global climate finance. Thus, MBDs are the majority deliverer of public climate finance. In terms of loan volumes, the European Investment Bank (EIB) constitutes the biggest multilateral lender in the world and operates as the lending arm of the European Union. The EIB has put itself in the centre of the transition to a sustainable economy as it announced itself as the “EU climate bank” when adopting its latest environmental strategy, the *EIB Group Climate Bank Roadmap 2021-2025* (CBR).

This thesis aims to examine how the EIB has incorporated environmental and human rights concerns into its lending activities, and the alignment of its internal environmental policies with international human rights standards on the right to a healthy environment. To achieve this overarching aim, the thesis examines the human rights obligations to the right to a healthy environment. The unclear human rights obligations on the right to a healthy environment are emphasized, especially focusing on the uncertainties related to international organisations such as the EIB. These uncertainties stem from the distinct and versatile features of the EIB, as it constitutes an EU institution but also an independent MDB, thereby holding characteristics of a private commercial entity. However, a closer examination has shown that the EIB is obliged to fulfil both substantive and procedural obligations related to the right to a healthy environment due to its position as an EU institution.

As the human rights obligations of the EIB has been established, the thesis examines different internal environmental frameworks of the EIB, focusing on the CBR, to build an understanding of its commitment to environmental matters. By doing so, the thesis finds an absence of a human rights-based approach concerning its environmental commitment, thereby acknowledging that the EIB has avoided to fulfil its obligation to promote and protect the right to a healthy environment. These shortcomings of its environmental framework are problematic as projects financed by the EIB risk violating all human rights, due to the interdependence with the right to a healthy environment.

# Sammanfattning

Den här uppsatsen undersöker förhållandet mellan internationella finansiella institutioner, mänskliga rättigheter och miljö. I kampen mot klimatförändringar har hållbar finansiering lyfts fram som en åtgärd för att stödja skiftet till en hållbar ekonomi. Internationella finansiella institutioner är centrala aktörer i omväxlingen mot en hållbar ekonomi och utgör de främsta tillhandahållarna av offentlig klimatfinansiering, då de bidrar med 68% av den globala klimatfinansieringen. Den Europeiska investeringsbanken är Europeiska unionens finansieringsinstitut och världens största finansiella institution. Den har tagit en ledande roll i omväxlingen mot en hållbar ekonomi och har dessutom utnämnt sig till "EUs klimatbank" vid införandet av den senaste klimatstrategi, *EIB Group Climate Bank Roadmap 2021-2025* (CBR).

Syftet med uppsatsen är att undersöka till vilken grad den Europeiska investeringsbankens interna miljöregelverk motsvarar internationella standarder kopplat till rätten till en hälsosam miljö. För att uppfylla syftet börjar uppsatsen med att granskas det internationella regelverket kopplat till rätten till en hälsosam miljö. I uppsatsen framkommer det att internationella organisationers skyldigheter, däribland den Europeiska investeringsbanken, är odefinierade och otydliga. Dessa oklarheter beror främst på den mångsidiga karaktären av den Europeiska investeringsbanken som utgör en EU institution samtidigt som en självständig finansiell institution med egenskaper likt en kommersiell bank. Genom en närmre undersökning kan uppsatsen visa att banken har en skyldighet att upprätthålla internationella standarder kopplat till rätten till en hälsosam miljö på grund av sin ställning som en EU institution.

Utifrån denna förståelse har olika interna miljöregelverk från den Europeiska investeringsbanken granskats, med CBR som fokus, för att förbättra förståelsen för bankens åtaganden till miljöfrågor. I uppsatsen framkommer det att den Europeiska investeringsbanken har undvikit att inkorporera ett rättighetsperspektiv i förhållande till dess miljöåtaganden. Frånvaron av ett rättighetsperspektiv bidrar till att den Europeiska investeringsbanken delvis misslyckas att uppfylla sina skyldigheter att främja och skydda till rätten till en hälsosam miljö. Bristerna i CBR är särskilt problematiska eftersom den Europeiska investeringsbanken riskerar att överträda alla mänskliga rättigheter på grund av dess ömsesidiga samverkande och odelbarhet med rätten till en hälsosam miljö.

# Preface

Thank you to my supervisor Daria for your valuable input and support during this process. You have helped me understand and truly appreciate this subject.

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Lastly, thank you to dad. I wish you were here to guide me into this next chapter of my life.

# Abbreviations

Aarhus Convection	Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters
ADB	Asian Development Bank
AfDB	African Development Bank
ASEAN	Association of Southeast Asian Nations
CBR	EIB Group Climate Bank Roadmap 2021-2025
Charter	Charter of Fundamental Rights of the European Union
CO <sub>2</sub>	Global carbon dioxide
EBRD	European Bank for Reconstruction and Development
EFSD+	European Fund for Sustainable Development Plus
EIB	European Investment Bank
EU	European Union
Framework Principles	Framework Principles on Human Rights and the Environment
Green Deal	European Green Deal
GHG	Greenhouse gas
HRC	United Nations Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
IDFC	International Development Finance Club
IPCC	Intergovernmental Panel on Climate Change
NDICI	Neighbourhood, Development, and International Cooperation Instrument
Rio Declaration	1992 Rio Declaration on Environment and Development
SDG	United Nations Sustainable Development Goals
Stockholm Declaration	1972 Stockholm Declaration on the Human Environment
TEU	Treaty on European Union

TFEU	Treaty on the Functioning of the European Union
UNECE	United Nations Economic Commission for Europe
UN	United Nations
UNGA	United Nations General Assembly
WCED	World Commission of Environment and Development
World Bank	International Bank for Reconstruction and Development
2022 Standards	Environmental and Social Standards
2009 Statement	Statement on Environmental and Social Principles and Standards



# 1 Introduction

## 1.1 Background

More frequent and intense extreme weather events such as droughts, hurricanes, and heatwaves have served as a regular reminder that climate change is an alarming reality, not a matter of concern in the distant future. Human-induced climate change has already caused widespread impacts on nature and people to an extent and magnitude larger than previously predicted. The permanent damages to the structure and function of ecosystems affect nature and have resulted in adverse socio-economic losses.<sup>1</sup> Furthermore, the physical health of people has been affected by climate change on a global scale, which has resulted in disruptions in economic and social conditions. Human mortality has increased due to extreme weather, and air pollution, but also as a result of climate-related water and food-borne diseases.<sup>2</sup> Approximately 3.3 to 3.6 billion people have been estimated to be highly vulnerable to climate change, making climate change an increasing force driving displacement and involuntary migration in affected regions.<sup>3</sup>

These alarming damages and losses to nature and human life resulting from climate change have increased the demands for further climate action. A rapid reduction of global greenhouse gas (GHG) emissions and global carbon dioxide (CO<sub>2</sub>) emissions from fossil fuel use and industry-related sources are at the centre of climate actions due to the near-linear relationship between climate change and GHG and CO<sub>2</sub> emissions.<sup>4</sup> The most significant achievement in this direction was the adoption of the Paris Agreement in 2015, a legally binding international treaty on climate change with the main objective of limiting global warming to 1.5 °C above pre-industrial levels and increasing the ability to adapt to the impacts of climate change through a climate change resilient development.<sup>5</sup> Reductions in emissions are vital to achieving the goals set out in the Paris Agreement for both climate change mitigation and adaptation. The concept of net-zero emissions was incorporated into international policy as a response to the adoption of the Paris Agreement, setting the goal to bring anthropogenic GHG or CO<sub>2</sub> emissions

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<sup>1</sup> Intergovernmental Panel on Climate Change (IPCC) *Climate Change 2022 Impacts, Adaptation and Vulnerability: Summary of Policymakers*, IPCC Sixth Assessment Report, 12<sup>th</sup> Session of Working Group II and 55<sup>th</sup> Session of the IPCC, 27 February 2022 (accessed: 9 April 2022) para. SPM.B.1.2.

<sup>2</sup> Ibid, para. SPM.B.1.4.

<sup>3</sup> Ibid, paras. SPM.B.1.7 & SPM.B.2.

<sup>4</sup> United Nations Environment Programme (UNEP), *The Heat Is On: A world of climate promises not yet delivered: Emissions Gap Report 2021* 26 October 2021. Available at: [www.unep.org/resources/emissions-gap-report-2021](http://www.unep.org/resources/emissions-gap-report-2021) (accessed: 10 April 2022) p. 3 & 18.

<sup>5</sup> Paris Agreement, 12 December 2015, Article 2(1)(a-b).

to zero. Hence, the total GHG or CO<sub>2</sub> emissions over a given period shall be equal to an equivalent amount of aggregate removal of emissions. From a global geophysical perspective, all GHG or CO<sub>2</sub> emissions should be net-zero targets.<sup>6</sup>

### **1.1.1 Climate Change and the Right to a Healthy Environment**

Climate change mitigation and adaption are vital for the protection of human rights, as the effects of climate change undeniably pose a threat to nature and the physical, mental, and social well-being of human beings. Hence, climate change will significantly affect the enjoyment of basic human rights.<sup>7</sup> The right to a safe, clean, healthy, and sustainable environment, or simply the right to a healthy environment, has developed into an established legal principle and was recognized as a human right in 2021 when the Human Rights Council (HRC) adopted resolution 48/13.<sup>8</sup> Despite the positive development to adopt a human rights approach concerning climate change, and thereby acknowledging the interconnection between the environment and all living things, indications show that a lot more has to be done to prevent catastrophic consequences. The newest report from the Intergovernmental Panel on Climate Change (IPCC), following the first instalment of the IPCC's Sixth Assessment Report Working Group II's contribution, paints a troubling picture and clarifies the impacts of climate change. Even limiting the global warming to 1.5°C above pre-industrial levels will bear devastating impacts on ecological and human systems.<sup>9</sup> Additionally, the report warns about the catastrophic results to be expected if global warming exceeds 1.5°C, even temporarily, as it will cause severe and even irreversible effects.<sup>10</sup> The result of climate change will drastically affect the enjoyment of all human rights, and the United Nations (UN) Secretary-General Antonio Guterres called the report "an atlas of human suffering and a damning indictment of failed climate leadership".<sup>11</sup>

According to the report, an immediate upscale of mitigation and adaption measures must be made to reach the goal of limiting global warming to 1.5°C. Different stakeholders have progressed their climate action, but there is an uneven distribution and adaption gaps have been

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<sup>6</sup> UNEP (nr 4) p. 18 & 21.

<sup>7</sup> United Nations General Assembly (UNGA), A/RES/2398 (XXIII) (3 December 1968).

<sup>8</sup> United Nations Human Rights Council (HRC), *Resolution adopted by the Human Rights Council on 8 October 2021 – 48/13 The human right to a clean, healthy and sustainable environment*, A/HRC/RES/48/12, 18 October 2021, para. 1.

<sup>9</sup> IPCC (nr 1) para. B.3.3.

<sup>10</sup> Ibid, para. B.6.

<sup>11</sup> United Nations (UN), 'IPCC adaption report 'a damning indictment of failed global leadership on climate'', UN News: Global perspective Human Stories' 28 February 2022 [website]. Available at: [www.news.un.org/en/story/2022/02/1112852](http://www.news.un.org/en/story/2022/02/1112852) (accessed: 19 April 2022).

observed.<sup>12</sup> One of the main limitations for adaption across regions and sectors is financial constraints. The Paris Agreement calls for a transition of financial flows to sustainable projects from both public and private finance sources, which is a vital measure to achieve human adaption.<sup>13</sup> Sustainable finance, or climate finance, is a measure to relocate financial flows to target climate mitigation and adaptation which has shown an upward trend over the last decade.<sup>14</sup>

### 1.1.2 The European Investment Bank and Sustainable Finance

The interactions between financial flows and the impacts on climate change are seldom the centre of attention when discussing human rights. However, the importance of engaging financial actors, such as multinational development banks (MDBs), in the transition to a sustainable economy has received increased attention. MDBs constitute supranational institutions governed by States, with the task to foster economic development aid and promote progress by financing projects, supporting investments, and generating capital.<sup>15</sup> These institutions annually fund projects through loans and grants worth billions of euros e.g., infrastructure projects, development, and technical assistance.<sup>16</sup> These projects aim to facilitate economic growth and development, but can also have vast environmental impacts and result in human rights violations. Large-scale development projects such as large infrastructure, can directly affect both social and environmental rights, contributing to adverse impacts on the lives of people and ecosystems.<sup>17</sup>

The concept of climate and/or sustainable finance has emerged as a response to climate change and other social challenges, to promote a rapid transition towards a sustainable economy. Sustainable finance constitutes an umbrella term that contains concepts related to ethical, socially, and environmentally responsible finance in various sectors. Hence, the meaning of sustainable finance varies between sectors.<sup>18</sup> MDBs have historically been reluctant to include

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<sup>12</sup> IPCC (nr 1) para. C.1.

<sup>13</sup> Ibid, para. C.3.2; Paris Agreement, Article 2(1)(c).

<sup>14</sup> IPCC (nr 1) para. C.3.2.

<sup>15</sup> European Investment Bank (EIB), 'Multilateral development banks', *European Investment Bank* [website]. Available at: [www.eib.org/en/about/partners/development-banks/index.htm](http://www.eib.org/en/about/partners/development-banks/index.htm) (accessed: 3 March 2022).

<sup>16</sup> Williams-Elegbe S, *Public Procurement and Multilateral Development Banks: Law, Practice and Problems* (Bloomsbury Hart Publishing, 2017) p. 3.

<sup>17</sup> Braaten D.B, 'Ambivalent engagement: Human rights and the multilateral development banks' in Park S & Strand J.R (ed.) *Global Economic Governance and the Development Practices of the Multilateral Development Banks* (Routledge, 2015) p. 101.

<sup>18</sup> La Torre M & Chiappini H, 'Sustainable Finance: Emerging Challenges and Opportunities' in La Torre M & Chiappini H (ed.) *Contemporary Issues in Sustainable Finance: Financial Products and Financial Institutions* (Palgrave Macmillan, 2021) p. 1.

human rights and environmental standards into their lending policies.<sup>19</sup> However, due to the significant environmental impacts related to the funding disbursed by MDBs, and their ability to direct financial flows towards sustainable and green projects, MDBs have been acknowledged as a vital player in climate action to lead the transition to an environmentally sustainable economy.<sup>20</sup> MDBs have also increasingly acknowledged their impact on climate change and human rights which in turn has resulted in the adoption of an increasing amount of social and environmental standards.<sup>21</sup>

One bank that has followed this development is the European Investment Bank (EIB). The EIB is a relatively unknown MDB that often remains in the shadow of more well-known institutions such as the International Bank for Reconstruction and Development (the World Bank) and the European Bank for Reconstruction and Development (EBRD).<sup>22</sup> The EIB and the European Investment Fund (EIF) form the EIB Group, which is the long-term financing institution of the European Union (EU). The EIB is the world's largest multilateral financial institution, and the total financing of the EIB Group was €94.9 billion in 2021, of which €65.3 billion was financed by the EIB alone.<sup>23</sup>

The EIB has formed its strategy on sustainable finance, resulting in the adoption of both environmental and social standards to set guidelines for EIB projects and to further promote sustainable development within their lending strategy.<sup>24</sup> The EIBs latest strategy is enshrined in the *EIB Group Climate Bank Roadmap 2021-2025* (CBR) which includes a self-announced ambition to become the “EU climate bank”.<sup>25</sup> The CBR was adopted in November 2020 to advance the EIB's climate finance objective to meet the temperature and climate-resilience

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<sup>19</sup> McBeth A, 'A Right by Any Other Name: The Evasive Engagement of International Financial Institutions with Human Rights' (2009) *George Washington International Law Review*, Vol. 40, Issue 4, p. 1101.

<sup>20</sup> Giglio S, Kelly B.T & Stroebel J, 'Climate Finance' (2020) *National Bureau of Economic Research*, Working Paper 28226, p. 2.

<sup>21</sup> Climate Policy Initiative (CPI) *Global Landscape of Climate Finance 2021*, December 2021. Available at: [www.climatepolicyinitiative.org/wp-content/uploads/2021/10/Full-report-Global-Landscape-of-Climate-Finance-2021.pdf](http://www.climatepolicyinitiative.org/wp-content/uploads/2021/10/Full-report-Global-Landscape-of-Climate-Finance-2021.pdf) (accessed: 24 March 2022) p. 3.

<sup>22</sup> Amoyel L, 'Mainstreaming Human Rights in the European Investment Bank' (2003) *Baltic Yearbook of International Law*, Vol. 3, p. 254.

<sup>23</sup> EIB, '*EIB at a Glance*' 6 May 2022. Available at: [www.eib.org/attachments/publications/eib\\_at\\_a\\_glance\\_en.pdf](http://www.eib.org/attachments/publications/eib_at_a_glance_en.pdf) (accessed: 12 May 2022) p. 4.

<sup>24</sup> Organisation for Economic Co-operation and Development (OECD), '*Green Finance and Investment: Developing Sustainable Finance Definitions and Taxonomies*' 6 October 2020. Available at: [www.oecd.org/env/developing-sustainable-finance-definitions-and-taxonomies-134a2dbe-en.htm](http://www.oecd.org/env/developing-sustainable-finance-definitions-and-taxonomies-134a2dbe-en.htm) (accessed: 28 February 2020) p. 29.

<sup>25</sup> EIB Group, '*EIB Group Climate Bank Roadmap 2021-2025*' (CBR) 14 December 2020. Available at: [www.eib.org/en/publications/the-eib-group-climate-bank-roadmap](http://www.eib.org/en/publications/the-eib-group-climate-bank-roadmap) (accessed: 1 March 2022) para. 1

goals of the Paris Agreement. In addition, the CBR defines how the EIB shall support the objectives of the European Green Deal (Green Deal) which constitutes the environmental framework applicable to all EU institutions and Member States with the main goal to achieve net-zero emissions by 2050. The CBR clarifies that the EIB shall support €1 trillion in climate action and environmental sustainability by 2030 to achieve these objectives. In addition, the EIB shall gradually increase its annual financing for climate action and environmental sustainability to 50% by 2025 (compared to the current 25%). Furthermore, all operations, such as lending, guarantees, securitization, and equity, shall be aligned with the goals of the Paris Agreement.<sup>26</sup>

The EIB claims to be the first international climate bank and the adoption of the CBR indicates that the EIB is committed to supporting an environmentally sustainable transition of the European economy. According to the EIB, its internal framework shall apply a human rights-based approach in its lending activities, and it has committed itself to climate change mitigation.<sup>27</sup> However, critique has been directed at the EIB for the vast negative environmental and social impacts of some of the projects it funds, such as pollution and displacement; failing to apply proper human rights due diligence; failing to require human rights impacts assessments; and for a lack of responsibility for its financial intermediary investments.<sup>28</sup> Hence, the EIB has failed to create an overarching climate and human rights framework. The result might be that the EIB continues to support projects that contribute to human rights violations, including the right to a healthy environment.<sup>29</sup>

The question of mapping the human rights violations of the MDBs is complicated due to the dual nature of these banks, which are international organisations but also hold characteristics of private entities such as commercial banks.<sup>30</sup> Additionally, the EIB is the lending arm of the EU, making it an EU institution. Despite its close relationship with the EU, the founding statute

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<sup>26</sup> CBR (nr 25) para. 1(1)(A-C).

<sup>27</sup> Schade J, 'EU accountability for the due diligence failures of the European Investment Bank: climate finance and involuntary resettlement in Olkaria, Kenya' (2017) *Journal of Human Rights and the Environment*, Vol. 8, Issue 1, p. 73.

<sup>28</sup> CEE Bankwatch Network, 'EU bank's new environmental and social policy not fit for lofty development ambitions' 2 February 2022 [website]. Available at: [www.bankwatch.org/press\\_release/eu-bank-s-new-environmental-and-social-policy-not-fit-for-lofty-development-ambitions](http://www.bankwatch.org/press_release/eu-bank-s-new-environmental-and-social-policy-not-fit-for-lofty-development-ambitions) (accessed: 18 April 2022).

<sup>29</sup> CEE Bankwatch Network, 'Can the EIB Become the "EU Development Bank"? A critical view on EIB operations outside Europe', November 2020. Available at: [www.bankwatch.org/wp-content/uploads/2020/11/2020-Can-the-EIB-become-the-EU-Development-Bank\\_Online.pdf](http://www.bankwatch.org/wp-content/uploads/2020/11/2020-Can-the-EIB-become-the-EU-Development-Bank_Online.pdf) (accessed: 18 April 2022) p. 10.

<sup>30</sup> Williams-Elegbe (nr 16) p. 31.

of the EIB establishes its separate legal personality and financial autonomy.<sup>31</sup> Hence, the undefined status of MDBs, and especially of the EIB, under international law render their human rights obligations rather difficult to establish. The diffuse nature of the EIB's human rights obligations is problematic. The environmental and human rights impacts of the EIB cannot be underestimated as it constitutes the world's biggest lender supporting projects all over the world. In addition, the EIB gives big promises as it has positioned itself as the first international climate bank. What regulation and responsibility are the EIB obliged to comply with within the context of climate change and human rights, if any? The EIB stands in a unique position to develop the concept of sustainable finance due to its magnitude and influence. Thus, it is necessary to clarify how far-reaching its human rights obligations related to the environment are.

## **1.2 Aim and Research Questions**

This thesis aims to examine how the EIB has incorporated environmental and human rights concerns into its lending activities, and the alignment of its internal environmental policies with international human rights standards on the right to a healthy environment. The following research question will be answered to achieve the overarching aim:

- To what extent are the environmental policies adopted by the EIB consistent with the right to a healthy environment?

The following sub-question will be answered to answer the main research question:

- Is the EIB obliged to include environmental and human rights considerations in its lending policies?

## **1.3 Methodology and Materials**

The most frequently adopted approach in legal human rights research is doctrinal methodology, also called black-letter methodology. Doctrinal research focuses on the letter of the law, meaning that authoritative rules are systematically analysed to understand the meaning of the law, examine the relationship between different rules, and possibly forecast future

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<sup>31</sup> Amoyel (nr 22) p. 259.

developments of the law. Hence, the doctrinal method is used as a process to answer the question “what is the law?”<sup>32</sup>

The doctrinal method is used as a starting point for the thesis, as it is a necessary tool to understand the applicable legal framework. The right to a healthy environment is an acknowledged legal principle but it has been interpreted by several relevant bodies recognizing the right to a healthy environment. Thus, it is necessary to begin defining what the applicable law is. Primary sources recognizing the right to a healthy environment, such as the Aarhus Convention, national legislation, and jurisprudence from regional human rights courts, are the primary target for this analysis. In addition, soft law instruments, such as the 1972 Stockholm Declaration on the Human Environment (Stockholm Declaration), the 1992 Rio Declaration on Environment and Development (Rio Declaration), and resolutions from the United Nations (UN) are examined. Henceforth, it is necessary to understand how the right to a healthy environment applies to the EIB. Due to its position as an EU institution, the primary law of the EU is also examined, such as the Treaty on the Functioning of the European Union (TFEU), Treaty on European Union (TEU), and the Charter of Fundamental Rights of the European Union (the Charter). The EIB Statute is also of relevance, which is annexed as Protocol No. 5 to the TEU and TFEU.

Doctrinal methodology constitutes a necessary tool to understand the law but may be insufficient as a method to properly explore a subject that has historical, political, and ethical dimensions, such as human rights. Hence, it is necessary to look beyond the letter of the law and include additional perspectives and dimensions when analysing human rights, as the doctrinal method alone can at times give a narrow understanding of the subject.<sup>33</sup> The human rights approach conducted in this thesis motivates taking alternative considerations into account and the use of secondary sources, as this enables the analysis not only to examine what the law means when interpreted correctly but also its practical effects when applied.

Secondary sources are used to clarify how the right to a healthy environment shall be applied in practice. Among these secondary sources are the annual reports from the Special Rapporteurs

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<sup>32</sup> Gonzalez-Salzberg D.A & Hodson L, ‘Introduction: Human rights research beyond the doctrinal approach’ in Gonzalez-Salzberg D.A & Hodson L (ed.) *Research Methods for International Human Rights Law* (Routledge, 2020) p. 2.

<sup>33</sup> *Ibid*, p. 2-3.

on human rights and the environment (formerly the Independent Expert) which examine how the right to a healthy environment shall be applied in practice, and the obligations that arise from the right to different stakeholders. Scholarly texts are used by prominent authors such as John H. Knox and David R. Boyd, both of whom held the position of the Special Rapporteur, are used for the understanding of the right to a healthy environment. Texts by e.g., Jan Wouters, Garcia Marín Durán, Elisa Morgera, and Sanja Bogojevic are used to understand the human rights obligations of the EIB as an EU institution. Limited research has been made on the human rights and environmental obligations of the EIB, and none on its obligations specifically on the right to a healthy environment. Thus, a significant part of the thesis is devoted to examining internal frameworks. These frameworks illustrate how the EIB has incorporated environmental considerations into its lending operations, which are later analysed in relation to the right to a healthy environment. Other sources such as reports from civil society groups are also included to further develop the analysis. These sources are a vital addition to the legal sources to analyse to what extent the EIB has adopted environmental policies that are consistent with the right to a healthy environment.

This line of reasoning is closely connected to critical legal studies, which accentuate the close relationship between law and politics. This approach implies that the law does not exist in a vacuum, and it is, therefore, necessary to analyse the law in its context which is often characterized by a complex reality of politics and other social, economic, or moral aspects.<sup>34</sup> Critical legal studies are also closely related to the idea of indeterminacy of the law. This concept rejects the idea that rules are applied rationally and objectively. The law cannot provide a right answer, as the law does not offer legal objectivity, and the meaning will therefore be resolved through policy and political choices.<sup>35</sup> These aspects are relevant to the subject of this thesis, as the interaction between law and politics is present when shaping environmental law and policy-making. Environmental considerations are formed to protect the environment itself, individuals, and future generations as climate change pose a threat to the enjoyment of all human rights. However, these interests must often be balanced against different economic considerations, such as the need for economic development. All these interests are protected by the legal order, in different ways. Hence, it is necessary for the thesis, to apply a doctrinal methodology to understand the applicable legal framework, but also to interpret the application

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<sup>34</sup> Bianchi A, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford University Press, 2016) p. 163.

<sup>35</sup> *Ibid*, p. 136-138.



of the law in the political and economic context in which the law exists to understand how the law is applied in practice. To conclude, the thesis undertakes an analysis based on legal doctrinal research method and critical legal analysis, meaning that different legal sources and internal frameworks are compared in order to see to what extent the environmental policies adopted by the EIB are consistent with the right to a healthy and sustainable environment.

## 1.4 Delimitation

The concept of sustainable finance has been embraced, to a varying degree, by all major MDBs as MDBs have increasingly acknowledged their impact on climate change and human rights.<sup>36</sup> However, the thesis will be restricted to examining this development and current practices of the EIB. This choice has been made primarily due to three aspects. Firstly, since the EIB constitutes the world's largest multilateral finance institution, consequently funding numerous projects both within the EU and around the world. The potential environmental impacts are therefore widespread. Secondly, due to its position as an EU institution. Thirdly, due to the EIB's self-appointed position as the "EU climate bank".

When discussing environmental rights, a range of different approaches can be taken to determine the meaning of such rights, what is relevant to the discussing, and will offer different conclusions. The variety of approaches to environmental rights is acknowledged, but these three approaches can generally be used to describe environmental rights: rights *of* nature, the human right *to* the environment, or environmental participatory rights.<sup>37</sup> Even though there is an overlap between these approaches, this thesis will focus on the two latter aspects, namely the human right to a healthy environment and environmental participatory rights, as they are more common in terms of judicial practice for environmental rights.<sup>38</sup> Environmental rights as participatory rights refer to the procedure and providing of rights and abilities to individuals to participate in policy-making processes related to environmental issues. This generally includes the right to information, access to justice, and public participation in decision-making processes.<sup>39</sup> This approach is included in the thesis as it forms an essential part to assure the

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<sup>36</sup> OECD (nr 24) p. 29.

<sup>37</sup> Bogojevic S & Rayfuse R, 'Environmental Rights in Europe and Beyond: Setting the Scene' in Bogojevic S & Rayfuse R (ed.) *Environmental Rights in Europe and Beyond* (Hart Publishing, 2018) p. 4.

<sup>38</sup> Hilson C, 'Substantive Environmental Rights in the EU: Doomed to Disappoint?' in Bogojevic S & Rayfuse R (ed.) *Environmental Rights in Europe and Beyond* (Hart Publishing, 2018) p. 88.

<sup>39</sup> *Ibid*, p. 13.

enforcement of the right to a healthy environment, as participatory rights ensure that the right to a healthy environment remains justiciable and enforceable due to procedural obligations.

## 1.5 Outline

The thesis starts by giving an overview of the development of the right to a healthy environment in chapter 2. It includes a historical overview of its development before discussing the present status of the human right to a healthy environment as acknowledged by the HRC in 2021. The purpose of this chapter is to examine the human rights obligation arising from the right to a healthy environment and to emphasize the uncertainties regarding the application of these obligations by non-State actors such as MDBs.

Chapter 3 gives an overview of the EIB focusing on the main objectives, structure, and governance of the organisation. The dual nature of the EIB, as it constitutes a central EU institution but also an independent actor in the financial market, will be emphasized in this chapter. This focus is necessary as it accentuates the vague position of the EIB under international law, and the difficulties to establish whether the EIB has any obligation to comply with the right to a healthy environment. This chapter further engages in the discussion on whether the EIB has any human rights obligation related to the environment. The focus of the discussion is once again the dual characteristics of the EIB and its obligations to comply with the primary law of the EU and the Aarhus Convention.

Chapter 4 presents how the EIB has incorporated environmental concerns within its lending operations in line with the concept of sustainable finance. This chapter contains an overview of the different environmental frameworks adopted by the EIB, focusing on the CBR, to emphasize how the EIB claims to have increased its human rights-based approach. However, the shortcomings of these frameworks are accentuated, such as the double environmental standards on activities carried out outside Europe and the failed environmental and human rights assessments on financial activities carried out through financial intermediaries.

Chapter 5 analyses the shortcomings of the CBR and further discusses whether the EIB can be classified as a “climate bank”. This chapter aims to answer the research question: to what extent are the environmental policies adopted by the EIB consistent with the right to a healthy environment? The main argument of this chapter is that EIB has neglected to incorporate a

human rights-based approach concerning its environmental policies, thereby failing to align its policies with the obligations of the right to a healthy environment. A wider issue discussed in this chapter is whether the standards set out in the CBR are sufficient. Indications show that the goals set out in the Paris Agreement might be too low to protect ecological and human systems. Hence, the EIB should go further than the Green Deal and the Paris Agreement to effectively tackle climate change. Consequently, the EIB has a long way to go before becoming a “climate bank”.

Finally, chapter 6 is devoted to answering the research questions of this thesis and outlines the conclusions that have been made.

# 2 The Right to a Healthy Environment

## 2.1 Introduction

The universal human rights to a life of freedom, equality, and dignity were established with the adoption of the Universal Declaration of Human Rights (UDHR)<sup>40</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>41</sup> Historically, however, the major universal human rights treaties have failed to include environmental rights, mainly as these areas of law have grown separately during different periods of time.<sup>42</sup> Since the beginning of the environmental movement in the late 1960s, scientific knowledge regarding the environment has rapidly increased and the nexus between the environment and human rights have been acknowledged and emphasized. This progress has put environmental concerns at the centre of human rights efforts, due to the undisputed fact that a healthy environment is vital for the full enjoyment of all human rights.<sup>43</sup> Environmental rights have mainly been included in human rights law in two different ways. Firstly, through the adoption of a new right, the right to a healthy environment. Secondly, by interpreting already existing rights, such as the right to life and the right to health, in the context of environmental issues.<sup>44</sup>

The fundamental interdependence between human rights and environmental protection has been acknowledged over the last decades. This notion has led to the emergence of the right to a healthy environment which currently is an established legal principle and enjoys constitutional protection, or is included in the national legislation, of more than 150 nations.<sup>45</sup> The right is further recognized in several multilateral and regional human rights treaties and has been interpreted by regional and domestic courts as well as human rights bodies.<sup>46</sup> Even though the right to a healthy environment has been acknowledged in various forms, the merging of human

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<sup>40</sup> Universal Declaration of Human Rights (UDHR), GA Resolution 217A (III) (10 December 1948).

<sup>41</sup> International Covenant on Civil and Political Rights (ICCPR) (adopted: 16 December 1966, entered into force: 23 March 1976) United Nations, Treaty Series, vol. 999.

<sup>42</sup> Knox J.H & Pejan R, 'Introduction' in Knox J.H & Pejan R (ed.) *The Human Right to a Healthy Environment* (Cambridge University Press 2018) p. 2.

<sup>43</sup> HRC 'Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox', A/HRC/22/43, 24 December 2012, paras. 7-9.

<sup>44</sup> A/HRC/22/43 (nr 43) para. 11.

<sup>45</sup> United Nations Environment Program (UNEP), 'Environmental Rule of Law: First Global Report' 24 January 2019. Available at: [www.unep.org/resources/assessment/environmental-rule-law-first-global-report](http://www.unep.org/resources/assessment/environmental-rule-law-first-global-report) (accessed: 2 February 2022) p. 2.

<sup>46</sup> Boyd D.R, 'Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment', in Knox J.H & Pejan R (ed.) *The Human Right to a Healthy Environment* (Cambridge University Press 2018) p. 40.

rights and the environment has not relied on the recognition of a human right to a healthy environment. This changed, however in October 2021 when the HRC adopted resolution 48/13 recognizing the human right to a healthy environment.<sup>47</sup>

The process of acknowledging the nexus between human rights and the environment, as well as the human right to a healthy environment, has progressively developed. Nevertheless, there is an aspect that still requires clarification, despite various attempts to further define and clarify the scope of human rights obligations related to the right to a healthy environment.<sup>48</sup> One area that is rarely mentioned in the mapping of human rights obligations concerning the environment is the status of intergovernmental organisations, such as international financial institutions. This aspect will be further examined throughout this thesis. This chapter starts with a historical overview of the right to a healthy environment and the nexus between human rights and the environment, by emphasizing the main developments in the field. The following section continues to examine the present state of the right to a healthy environment and discusses the meaning of the right, and what obligations human rights law imposes about environmental protection.

## 2.2 Development of Human Rights and the Environment

The nexus between environmental damage and the challenges in guaranteeing the enjoyment of human rights was early acknowledged by the modern environmental movement. The United Nations General Assembly (UNGA) raised concerns about environmental degradation in 1968 when it stated that the physical, mental, and social well-being of human beings, including the enjoyment of basic human rights, will be affected by the impairment of the environment.<sup>49</sup> The United Nations Conference on the Environment in Stockholm was arranged as a response to such concerns, and it was the first global environmental conference to address the challenges of preserving the human environment. The conference aimed to create a declaration recognizing basic principles of the human environment.<sup>50</sup> The result was the Stockholm Declaration which

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<sup>47</sup> UNGA, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, Note by the Secretary General, A/73/188, 19 July 2018, para. 15.

<sup>48</sup> HRC, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/37/59, 24 January 2018, para. 18.

<sup>49</sup> A/RES/2398 (nr 7)

<sup>50</sup> Handl G, 'Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration of the Environment and Development, 1992' (2012) *United Nations Audiovisual Library of International Law*, p. 1.

comprises a preamble containing seven proclamations and 26 principles, focusing on broad environmental policy goals and objectives.<sup>51</sup>

The Stockholm Declaration is the first official document to acknowledge the right to a healthy environment and it emphasizes the importance of guaranteeing a sustainable environment to enjoy basic human rights. Hence, the Stockholm Declaration marks the beginning of a rights-based approach in the context of environmental issues.<sup>52</sup> The right to a healthy environment is stipulated in Principle 1, which acknowledges the fundamental right to “adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”.<sup>53</sup> However, proposals to create and include an environmental human right was rejected at the time.<sup>54</sup>

Despite its status as a soft law instrument, the Stockholm Declaration influenced the development of environmental law, e.g., through the incorporation of environmental rights in national and regional legislation.<sup>55</sup> Portugal was the first country to include a specific environmental right in its constitution in 1976, more precisely the right to a “healthy and ecologically balanced human living environment”.<sup>56</sup> The constitutional protection of the right to a healthy environment has continued to be adopted by States all over the world.<sup>57</sup> The right to a healthy environment has also been included in various regional human rights instruments. It was included in the African Charter on Human and Peoples’ Rights in 1981, constituting the first regional human rights instrument to adopt an environmental right.<sup>58</sup> Other regional instruments followed, including the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights,<sup>59</sup> the 2004 Arab Charter on Human

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<sup>51</sup> Stockholm Declaration on the Human Environment (Stockholm Declaration), *United Nations Conference on the Human Environment*, 15 December 1972, A/RES/2994; Handl G, (nr 50) p. 1.

<sup>52</sup> Knox J.H, ‘The Past, Present, and Future of Human Rights and the Environment’ (2018) *Wake Forest Law Review* 53 649-666, p. 649.

<sup>53</sup> Stockholm Declaration, Principle 1.

<sup>54</sup> Handl (nr 50) p. 3.

<sup>55</sup> Boyd (nr 46) p. 17.

<sup>56</sup> Aragao A, ‘Environmental Standards in the Portuguese Constitution’ in Turner S.J, Shelton D.L, Razzaque J, McIntyre O, James R, May J.R (ed.) *Environmental rights: the development of standards* (Cambridge University Press, 2019) p. 248.

<sup>57</sup> Boyd (nr 46) p. 40.

<sup>58</sup> African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 I.L.M. 58, Article 24.

<sup>59</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ‘Protocol of San Salvador’ (adopted 17 November 1988, entered into force 16 November 1999) 28 I.L.M 161, Article 11.

Rights<sup>60</sup>, and the Association of Southeast Asian Nations (ASEAN). The latter included the right in their Human Rights Declaration.<sup>61</sup>

The World Commission of Environment and Development (WCED) published a report in 1987 underlining the need to adopt a universal declaration and a convention specifically on environmental protection and sustainable development. The WCED refers to the 1972 Stockholm Declaration, as well as the many existing international conventions and resolutions as examples of where the right to a sustainable environment is acknowledged. However, the report emphasizes that the relevant legal principles must be extended to create rights and common responsibilities in the context of environmental protection, which shall be binding for all States in a universal declaration.<sup>62</sup> The WCED appointed an expert group to propose suggested legal principles for environmental protection and sustainable development to be included in a global declaration, among these a “fundamental right to an environment adequate for their health and well-being”.<sup>63</sup>

These recommendations were neglected by the international community when meeting in Rio de Janeiro at the United Nations Conference on Environment and Development in 1992. The result of the conference was the adoption of the Rio Declaration which features a preamble and 27 principles.<sup>64</sup> The Rio Declaration failed to acknowledge the right to a healthy environment as a universal human right, contrary to the recommendations presented by the WCED. Instead, the Rio Declaration established that everyone is “entitled to a healthy and productive life in harmony with nature”.<sup>65</sup>

Despite these initial failed attempts to recognize the human right to a healthy environment, Principle 10 of the Rio Declaration marks an improvement for the integration of human rights and environmental rights. Even though Principle 10 does not use the term “right”, it does

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<sup>60</sup> Arab Charter on Human Rights 2004 (adopted 22 May 2004, entered into force 15 March 2008), CHR/NONE/2004/40/Rev.1, Article 38.

<sup>61</sup> ASEAN Human Rights Declaration (15 December 2008), Article 28(f).

<sup>62</sup> UNGA, *Report of the World Commission on Environment and Development*, Note by the Secretary General, 4 August 1987, A/42/25, paras. 85-86.

<sup>63</sup> UNGA (nr 62) Annex 1, para. I(1).

<sup>64</sup> Rio Declaration on Environment and Development (Rio Declaration), *Report of the United Nations Conference on Environment and Development*, 12 August 1992, A/CONF.151/26.

<sup>65</sup> *Ibid*, Principle 1.

include the possibility to guarantee certain procedural rights in international environmental agreements.<sup>66</sup> Principle 10 states as follows:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>67</sup>

Hence, Principle 10 does acknowledge the need for procedural rights in the context of environmental issues, such as the individual right to access information from public authorities concerning environmental matters, the right to public participation in decision-making processes, and the right to effective access to justice and remedy.<sup>68</sup>

Principle 10 of the Rio Declaration was further developed in the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus Convention).<sup>69</sup> The Aarhus Convention constitutes an international treaty adopted by the United Nations Economic Commission for Europe (UNECE) which guarantees three procedural rights in the context of the environment, i.e., the right to information;<sup>70</sup> the right to participate in decision-making;<sup>71</sup> and the right to access justice in environmental matters.<sup>72</sup> These procedural rights aim to fulfil the main objective of the Convention, “[...] to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being”.<sup>73</sup> According to Recital 6 of the Preamble, “adequate” environmental protection is vital for the enjoyment of fundamental human rights, including the right to life.<sup>74</sup> The Implementation Guide from 2014 claims that

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<sup>66</sup> Knox (nr 52) p. 652.

<sup>67</sup> Rio Declaration, Principle 10.

<sup>68</sup> Knox (nr 52) p. 652.

<sup>69</sup> Convention on Access to Information, Public Participation and Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (adopted 25 June 1998, entered into force 30 October 2001) ECE/CEP 43.

<sup>70</sup> Ibid, Article 4.

<sup>71</sup> Ibid, Article 6.

<sup>72</sup> Ibid, Article 9.

<sup>73</sup> Ibid, Article 1.

<sup>74</sup> Ibid, Recital 6.



Article 1 of the Aarhus Convention constitutes the clearest statement of the right to a healthy environment in international law. The Guide acknowledges that the right to a healthy environment is not explicitly mentioned in the Convention but rather refers to a well-known fact. The rationale for this is the fact that the meaning and formulation of the right to a healthy environment was still a matter of debate.<sup>75</sup> However, rather than acknowledging the right to a healthy environment in aspirational terms, the Aarhus Convention marks an important step in taking practical action to guarantee the right to a healthy environment through procedural environmental rights.<sup>76</sup> In addition, the Aarhus Declaration constitutes a legally binding document for the ratifying States. There are currently 46 State parties to the Declaration, including the EU.<sup>77</sup>

## 2.3 The Present State of the Right to a Healthy Environment

The right to a healthy environment has mainly been incorporated into national constitutions or regional human rights frameworks. Hence, the right to a healthy environment can be seen as a global right due to its transnational spread, as it has created a constitutional constellation expanding all over the world sharing vital common characteristics.<sup>78</sup> In addition, this bond has been recognized by the United Nations human rights Treaty Bodies, Special Procedures, regional human rights frameworks, international conferences, multilateral environmental agreements, courts, and domestic legislatures.<sup>79</sup> The recognition of the right to a healthy environment in national legislations and regional human rights instruments has also enabled domestic courts, commissions, and regional human rights tribunals to actively form and develop the jurisprudence on the right to a healthy environment, and to interpret existing human rights in light of environmental protection. Both the African Commission on Human and Peoples'

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<sup>75</sup> United Nations Economic Commission for Europe (UNECE), *The Aarhus Convention: An Implementation Guide*, 19 June 2014. Available at: [www.unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition](http://www.unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition) (accessed: 4 February 2022), p. 43.

<sup>76</sup> UNECE (nr 75) p. 43.

<sup>77</sup> European Parliament, *A universal right to a healthy environment*, 14 December 2021. Available at: [www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS\\_ATA\(2021\)698846\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf) (accessed: 15 February 2022).

<sup>78</sup> Kotzé L.J., 'In Search for a Right to a Healthy Environment in International Law: Jus Cogens Norms' in Knox, J.H & Pejan R (ed.), *The Human Right to a Healthy Environment* (Cambridge University Press 2018) p. 136.

<sup>79</sup> A/HRC/22/43 (nr 43) para. 37.

Rights and the Inter-American Court of Human Rights have clarified the obligations arising from respective instruments.<sup>80</sup>

As previously mentioned, the nexus between human right and environmental rights have not relied on the recognition of a human right to a healthy environment, even though it has been recognized in various forms. Instead, human rights law has rather been applied by “greening” existing human rights, such as the right to health or the right to life. A clear example is the jurisprudence presented by the European Court of Human Rights (ECtHR). The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) has not incorporated the right to a healthy environment, but the ECtHR has recurrently referred to an “environmental right”, although framed in a variety of ways when interpreting violations of other rights.<sup>81</sup> This jurisprudence has helped to further establish the human rights obligations arising from the right to a healthy environment, an aspect that has been mapped in detail by the Special Rapporteur (former Independent Expert) on the environment and human rights. This UN Special Procedure mandate was appointed by the HRC in 2012 to study these human rights obligations related to a healthy environment. This point is further developed in the next section, which examines the present state of the right to a healthy environment and human rights obligations related to the right.

However, the diversity of relevant bodies recognizing the right to a healthy and sustainable environment has created a fragmented system. The competent bodies responsible for the development have different sources of authority, mandates, and audiences. Even though many bodies are influenced by one another, the process of developing a human rights-based approach to environmental policies has been interpreted in different ways. This makes it problematic to establish which human rights obligations pertaining to the right to a healthy environment. Even though there are statements from different bodies on the obligations arising from the right to a healthy environment, they do not form a coherent set of norms. The general meaning of environmental rights, as well as enforcement and compliance mechanisms, differ and fail to create a uniform universal standard of the right.<sup>82</sup>

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<sup>80</sup> African Commission on Human and Peoples’ Rights, *The Social and Economic Action Center, et al. v. Nigeria*, No. 155/96, 27 October 2001, para. 52; Inter-American Court of Human Rights, *Advisory Opinion*, OC-23-17, 15 November 2017; Knox, J.H. & Pejan, R. (nr. 42) p. 2.

<sup>81</sup> Turner S.J, ‘Introduction: A Brief History of Environmental Rights and the Development of Standards’ in Turner S.J (ed.) *Environmental Rights: The Development of Standards* (Cambridge University Press, 2019) p. 56; E.g., *Tatar v. Romania*, Application No. 67021/01, Judgment, 27 January 2009, paras. 107 & 112.

<sup>82</sup> Kotzé (nr 78) p. 137.

### 2.3.1 Human Rights Obligations

An Independent Expert was appointed by the HRC in 2012 to further study and clarify the human rights obligations arising from the right to a safe, clean, healthy, and sustainable environment. John Knox was appointed as the first Independent Expert, with the mandate to provide conceptual clarity on what kind of human rights obligations are related to the environment.<sup>83</sup> His mandate was extended and renamed in 2015, as a Special Rapporteur on human rights and the environment.<sup>84</sup> In 2018, and subsequently 2021, the mandate was further expanded and David R. Boyd was appointed as the Special Rapporteur to continue to study, clarify and promote the realization of human rights obligations relating to the environment.<sup>85</sup>

The Independent Expert (later the Special Rapporteur) has published annual reports related to human rights obligations and the environment. These include reports on the interdependence between human rights and the environment<sup>86</sup> and mapping the human rights obligations related to the right to a healthy environment as well as identifying good practices related to these obligations.<sup>87</sup> The Special Rapporteur was urged in a report published in 2016 to develop more detailed guidance on the relevant norms related to the environment and to present recommendations on the implementation of human rights obligations.<sup>88</sup> The result was the Framework Principles on Human Rights and the Environment (the Framework), which were presented in 2018. The Framework summarizes the obligations under human rights law related to the enjoyment of a safe, healthy, and sustainable environment in sixteen principles.<sup>89</sup> The Special Rapporteur underlines that the principles do not create new legal obligations, but merely reflect the application of already existing human rights norms concerning environmental rights.<sup>90</sup> Many obligations are based on treaties, binding decisions from human rights courts, but also statements from competent human rights bodies that are authorized to interpret human

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<sup>83</sup> HRC, *Resolution adopted by the Human Rights Council 19/10 - Human rights and the environment*, A/HRC/RES/19/10, 19 April 2012, paras. 2(a-g).

<sup>84</sup> HRC, *Resolution adopted by the Human Rights Council 28/11 – Human rights and the environment*, A/HRC/RES/28/11, 7 April 2015, paras. 4 & 5(a-i).

<sup>85</sup> HRC, *Resolution adopted by the Human Rights Council on 22 March 2018 - 37/8 Human rights and the environment*, A/HRC/RES/37/8, 9 April 2018, para. 6; HRC *Resolution adopted by the Human Rights Council on 23 March 2021 - 46/7 Human rights and the environment*, A/HRC/RES/46/7, 30 March 2021, para. 5.

<sup>86</sup> A/HRC/22/43 (nr 43).

<sup>87</sup> HRC, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Compilation of good practices*, A/HRC/28/61, 3 February 2015.

<sup>88</sup> HRC, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/31/53, 28 December 2015, para. 69.

<sup>89</sup> A/HRC/37/59 (nr 48).

<sup>90</sup> *Ibid*, para. 8.

rights law, which does not necessarily constitute legally binding decisions. Hence, not all States have formally accepted the principles presented in the Framework.<sup>91</sup>

The Framework specifies the procedural obligations, such as the duty to respect and protect the rights to freedom of expression and association in relation to environmental matters;<sup>92</sup> environmental education and public awareness;<sup>93</sup> public access to information on the environment;<sup>94</sup> facilitate public participation in decision-making;<sup>95</sup> and to provide effective access to remedies for violations of human rights and domestic law relating to the environment.<sup>96</sup> These obligations originate from civil and political rights and are stipulated in the UDHR and the ICCPR.<sup>97</sup> These participatory rights have been further adjusted to an environmental context in Principle 10 of the Rio Declaration and in the more detailed Aarhus Declaration, which constitutes the leading example of a regional agreement establishing legal procedural obligations.<sup>98</sup>

The Framework also identifies the substantive obligations as substantive rights as the right to health or the right to life is likely to suffer due to environmental harm. Environmental standards shall therefore be implemented to prevent environmental harm, and to ensure the enjoyment of a healthy and sustainable environment. This underlines the interdependence between human rights and the environment.<sup>99</sup> Hence a healthy environment must be ensured to respect, protect, and fulfil other human rights. Furthermore, human rights must be respected, protected, and fulfilled to guarantee the right to a healthy environment.<sup>100</sup> However, these obligations can be limited depending on available resources as this can prevent the realization of e.g., the right to health, water, food, or other economic, social, and cultural rights.<sup>101</sup> In addition, the Framework establishes that the right to a healthy environment shall be applied to comply with the principle

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<sup>91</sup> Ibid, para. 8.

<sup>92</sup> Ibid, Annex, Principle 5.

<sup>93</sup> Ibid, Annex, Principle 6.

<sup>94</sup> Ibid, Annex, Principle 7.

<sup>95</sup> Ibid, Annex, Principle 9.

<sup>96</sup> Ibid, Annex, Principle 10.

<sup>97</sup> UDHR, Article 8, 19 & 21; ICCPR, Article 19 & 25.

<sup>98</sup> HRC, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John Knox: Mapping Report*, A/HRC/25/53, 30 December 2013, para. 29.

<sup>99</sup> Besson S, 'Justifications' in: Moeckli D, Shah S & Sivakumaran S (ed.) *International Human Rights Law*, 3<sup>rd</sup> edition (Oxford University Press, 2018) p. 36.

<sup>100</sup> A/HRC/37/59 (nr. 48) Annex, Principle 1 & 2.

<sup>101</sup> A/73/188 (nr. 47) para. 15.

of non-discrimination.<sup>102</sup> The Framework also established that additional measures shall be implemented to protect the rights of those who are most vulnerable to environmental harm, such as women, children, minorities, or persons with disabilities.<sup>103</sup>

According to the Framework, environmental standards must be effective, meaning that they must be implemented and enforced. These standards shall be monitored to enforce compliance, and violations committed by governmental authorities and private actors shall be prevented and investigated.<sup>104</sup> However, there are still some uncertainties on how these human rights norms relating to the environment shall be applied to specific areas or non-State actors. The Special Rapporteur acknowledges the responsibilities of business enterprises, the effects of multinational corporations, and transboundary harm as examples of such areas in need of further clarification.<sup>105</sup> Another area that is rarely mentioned in the mapping of human rights obligations concerning the environment is the status of intergovernmental organisations. For the purpose of this thesis, the status of MDBs is especially interesting, as it constitutes the main focus of inquiry.

### **2.3.2 The Human Right to a Healthy Environment**

The Framework Principles have clarified the human rights obligations concerning the environment, but the lack of a uniform and universal recognition of the right to a healthy environment has continued to be criticized. This changed with the adoption of Resolution 48/13 in 2021 when the HRC recognized that having a clean, healthy, and sustainable environment constitutes a human right – five decades after being recognized for the first time in the Stockholm Declaration in 1972.<sup>106</sup> This is the first acknowledgment of a universal right to a healthy environment and the resolution affirms that multilateral environmental agreements must be fully implemented to promote this right.<sup>107</sup> In addition, the resolution encourages States to build capacities for the efforts to fulfil their human rights obligations and commitments and further cooperation between States and other relevant non-State stakeholders. States shall share good practices in fulfilling human rights obligations and adopt policies relating to the enjoyment of the right to a healthy environment. Lastly, human rights obligations shall be

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<sup>102</sup> A/HRC/37/59 (nr 48) Annex, Principle 3.

<sup>103</sup> Ibid (nr 48) Annex, Principle 14; A/73/188 (nr. 47) para. 22.

<sup>104</sup> A/73/188 (nr 47) para. 17.

<sup>105</sup> A/HRC/37/59 (nr. 48) para. 18.

<sup>106</sup> A/HRC/RES/48/12 (nr. 8) para. 1.

<sup>107</sup> Ibid, para. 3.

considered when implementing the United Nations Sustainable Development Goals (SDG)<sup>108</sup> whilst considering the integrated and multisectoral nature of the matter.<sup>109</sup>

The recognition of the human right to a healthy environment is the result of a years-long campaign by different stakeholders, such as civil society organisations and the Special Rapporteurs. So, what implications will the recognition of the human right to a healthy environment have? As previously presented, one could argue that the right to a healthy environment already possesses the status of a global human right, due to its wide recognition by various actors around the world. However, this formal acknowledgment of the human right to a healthy environment affirms the universal protection of the right, which is also consistent with domestic and regional law in most parts of the world. The recognition could also encourage other actors to formally recognize the right, e.g., the Council of Europe, UNGA, or other States who have not incorporated the right to a healthy environment in their domestic legislation.<sup>110</sup> These tendencies have already been observed. An example is the resolution on the EU Biodiversity Strategy for 2030, where the European Parliament considers incorporating the right to a healthy environment in the Charter. This would affect all bodies of the European Union.<sup>111</sup> In addition, supplementary benefits should be emphasized. Environmental governance will most likely be increased as international, regional, and domestic environmental laws are strengthened. Consequently, the procedural elements of the right to a healthy environment can be strengthened, giving people and organisations access to information on environmental issues, access to justice, and the possibility to participate in decision-making.<sup>112</sup> Hence, the recognition of the human right to a healthy environment will hopefully develop and ensure healthier people and ecosystems.<sup>113</sup>

Even though the HRC recognizes the universal right to a healthy environment, the resolution does not constitute a legally binding document, which evidently would generate additional

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<sup>108</sup> UNGA, *Resolution adopted by the General Assembly on 25 September. Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1, 21 October 2015.

<sup>109</sup> A/HRC/RES/48/12 (nr 8) para. 4(a-d).

<sup>110</sup> Savaresi S, *'The UN HRC recognizes the right to a healthy environment and appoints a new Special Rapporteur on Human Rights and Climate Change. What does it all mean?'* EJIL: Talk! Blog of the European Journal of International Law, 12 October 2021. Available at: [www.ejiltalk.org/the-un-hrc-recognizes-the-right-to-a-healthy-environment-and-appoints-a-new-special-rapporteur-on-human-rights-and-climate-change-what-does-it-all-mean/](http://www.ejiltalk.org/the-un-hrc-recognizes-the-right-to-a-healthy-environment-and-appoints-a-new-special-rapporteur-on-human-rights-and-climate-change-what-does-it-all-mean/) (accessed: 16 February 2022).

<sup>111</sup> European Parliament, *European Parliament resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030: Bringing nature back into our lives*, 9 June 2021, A9-0179/2021, para. 143.

<sup>112</sup> A/73/188 (nr 47) para. 41.

<sup>113</sup> *Ibid*, para. 44.

value. It would generate supplementary moral claims with added symbolic power to the right to a healthy environment and send an authoritative institutional message. It would further underline the importance of the question. Furthermore, a legal recognition would provide additional precision and certainty, and importantly, enforceability.<sup>114</sup> However, despite its status as a non-binding document, the resolution will hopefully enhance the clarity of the definition and scope of human rights obligations arising from the right to a healthy environment, and positively increase the implementation and enforcement of the right.

## 2.4 Concluding Remarks

The right to a healthy environment has been recognized since the adoption of the Stockholm Declaration which marks the commencement of incorporation of the right in constitutions, national legislations, regional human rights instruments, and policies all over the world. The right to a healthy environment has gradually been defined by national courts, regional human rights tribunals, and mapped by the Special Rapporteurs on human rights and the environment.

However, despite these efforts, there are still aspects of the right to a healthy environment that remain vague. Clarification of the right to a healthy environment has been essential to elucidate human rights obligations for States to understand the scope of the right and to ensure enforcement and compliance at every level. Nevertheless, it has been acknowledged that there are still uncertainties, especially regarding the human rights obligations of non-State actors, such as MDBs. This aspect will be further examined throughout the rest of this thesis, as the aim is to examine to what extent environmental policies adopted by the EIB are aligned with the right to a healthy environment, and whether the EIB has a legal obligation to adopt environmental considerations in their lending policies, and if so, to what extent.

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<sup>114</sup> Rodríguez-Garavito C, 'A Human Right to a Healthy Environment? Moral, Legal and Empirical Considerations' in: Knox J.H & Pejan R (ed.) *The Human Right to a Healthy Environment* (Cambridge University Press 2018) p. 159.

# 3 The European Investment Bank

## 3.1 Introduction

MDBs are supranational financial institutions founded by States with the task to foster economic development aid and promote progress by financing projects, supporting investments, and generating capital.<sup>115</sup> MDBs include international banks such as the World Bank and the International Monetary Fund, and regional institutions such as the EIB, the EBRD, the African Development Bank (AfDB), and the Asian Development Bank (ADB).<sup>116</sup> These institutions have a significant role in major investment projects as they provide remarkable volumes of financial support to economies all over the world. They provide loans and grants for e.g., infrastructure projects, development, and technical assistance.<sup>117</sup> These projects aim to facilitate economic growth and development, but these lending activities can also result in human rights violations. Firstly, human rights can be indirectly affected when financial support is given to rights-repressing regimes. Secondly, large-scale development projects such as infrastructure can directly affect both social and environmental rights and the lives of people and ecosystems.<sup>118</sup>

The EIB constitutes the lending arm of the EU and the biggest multilateral lender in the world, with total financing of €65.3 billion in 2021. The total financing of the EIB Group, formed by the EIB and EIF, constituted €94.9 billion in 2021.<sup>119</sup> However, the EIB remains a rather anonymous MDB and has been subjected to relatively little research compared to other banks.<sup>120</sup> This chapter aims to introduce the EIB and the specific regulatory framework applicable to the structure and operations executed by the EIB. Subsequently, the legal personality and governance of the EIB are examined to emphasize the distinct and versatile features of the EIB, as it constitutes an EU institution but also an independent MDB, thereby holding characteristics of a private commercial entity. The unclear legal personality of the EIB raises questions regarding its human rights obligations, which will be further examined in the last section.

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<sup>115</sup> EIB (nr 15).

<sup>116</sup> OECD (nr 24) p. 29.

<sup>117</sup> Williams-Elegbe (nr 16) p. 3.

<sup>118</sup> Braaten (nr 17) p. 101.

<sup>119</sup> EIB (nr 23) p. 4.

<sup>120</sup> Clifton J, Díaz-Fuentes D & Gómez A.L, 'The European Investment Bank: Development, Integration, Investment?' (2018) *Journal of Common Market Studies*, Vol. 56, Number 4, p. 733.



## 3.2 Objectives of the European Investment Bank

The EIB was created in 1957 when Belgium, France, Germany, Italy, Luxemburg, and the Netherlands signed the Treaty of Rome establishing the European Economic Community (EEC), later transformed into the EU.<sup>121</sup> The aim of the EIB was to contribute to a balanced and steady development of the common market, which includes activities to limit regional inequalities, endorse the free movement of persons and goods through improved infrastructure, and to modernise old industries to limit the pressure caused by increased competition.<sup>122</sup> Thus, the EIB is an EU institution and remains authorized under the TEU and the TFEU.<sup>123</sup> The EIB Statute is annexed as Protocol No. 5 to the TEU and TFEU which determine the governance and structure of the Bank.<sup>124</sup> The EIB Statute is an integral part of the Treaties according to Article 51, giving the Statute the same legal force as the Treaties. Consequently, the EIB Statute has primacy over the national laws of the EU Member States.<sup>125</sup>

The main objective of the EIB is stipulated in Article 309 TFEU, which establishes that the task of the EIB is to contribute to a balanced and steady development of the internal market of the EU. To achieve this task the EIB grant loans and facilitate the financing of projects for the development of less-developed regions; projects that are of such a size or nature that they cannot be financed by means of an individual Member State and will modernize or develop activities called for by the functioning of the internal market; and projects of common interest to several Member States that cannot be financed by an individual Member State due to the size or nature of the project.<sup>126</sup> The main role of the EIB is therefore to supplement commercial banks in situations where they are unwilling or unable to take on the role of financier and step in to cover market financing gaps. It can be projects that require a substantial amount of funding and projects stretching over a long period of time, limiting the possibilities for commercial banks

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<sup>121</sup> EIB, *The Bank of the European Union: The EIB, 1958-2008* 4 February 2013. Available at: [www.eib.org/en/publications/the-bank-of-the-european-union-1958-2008P](http://www.eib.org/en/publications/the-bank-of-the-european-union-1958-2008P) (accessed: 2 March 2022) p. 51.

<sup>122</sup> Treaty establishing the European Economic Community (signed 25 March 1957, entered into force 1 January 1958) Article 130.

<sup>123</sup> Consolidated version of the Treaty on European Union (TEU), 26 October 2012, OJ C 326/13; Consolidated version of the Treaty on the Functioning of the European Union (TFEU), 13 December 2007, OJ C326/1; EIB, *Statute and other Treaty provisions*, 1 March 2020. Available at: [www.eib.org/attachments/general/statute/eib\\_statute\\_2020\\_03\\_01\\_en.pdf](http://www.eib.org/attachments/general/statute/eib_statute_2020_03_01_en.pdf) (accessed: 21 April 2022) p. 6.

<sup>124</sup> Consolidated version of the Treaty on the Functioning of the European Union, Protocol (No. 5) on the Statute of the European Investment Bank (EIB Statute), 7 June 2016, OJ C202/251, p. 251-264.

<sup>125</sup> EIB Group, *EIB Group Corporate Governance Report 2020* 9 December 2021. Available at: [www.eib.org/attachments/publications/eib\\_group\\_corporate\\_governance\\_report\\_2020\\_en.pdf](http://www.eib.org/attachments/publications/eib_group_corporate_governance_report_2020_en.pdf) (accessed: 24 February 2022), p. 1.

<sup>126</sup> TFEU, Article 309.

to finance such projects. The EIB can also step in in times of crises, such as financial turndowns or in the aftermath of natural disasters.<sup>127</sup>

To achieve the main objective of the EIB, which is to attain the EU's policy objectives, the EIB offers long-term loans and guarantees in the field of e.g., infrastructure, energy, innovation as well as social and environmental investments.<sup>128</sup> In addition, the EIB engages in public and private investment projects.<sup>129</sup> These financing instruments are mainly provided to the Member States, enterprises, the public sector, and other enterprise projects. Financing shall always be added to other investments and shall not exceed 50% of the investment cost. However, there are exceptional cases where the EIB has financed a higher share of the investment cost, in projects related to e.g., renewable energy.<sup>130</sup>

The EIB enjoys financial autonomy and raises its lending resources on the international capital market through bond issuance, despite being an EU institution.<sup>131</sup> An aspect that separates the EIB from commercial banks is the fact that the EIB constitutes a non-profit organisation driven by public policy objectives set out in the Treaties. In addition, the EIB has a counter-cyclical role which requires the EIB to step up its activities to stem economic recessions, an example is the financing activities during the economic crisis in 2008 when the EIB unlocked access to finance in underserved segments to ease the impact of the economic turndown. Hence, the EIB aims to generate income to meet its obligations, cover expenses, and to build a reserve fund. Consequently, the EIB does not have a specific target for return on equity.<sup>132</sup>

The EIB shall contribute to the economic, social, and territorial cohesion of the EU to promote its overall harmonious development as set out in TFEU and referenced in the annexed Protocol No. 28 on Economic, Social, and Territorial Cohesion.<sup>133</sup> Originally, the EIB aimed at financing investments in the EEC, later transformed into the EU, but widened the geographical scope of its competence to include support measures that shall be implemented outside the EU to support

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<sup>127</sup> Halász Z, 'An EU Institution Facing Challenges and Providing Real European Added Value' (2019) *Hungarian Yearbook of International Law and European Law*, pp. 327-246, p. 330.

<sup>128</sup> TFEU, Article 309; EIB Statute, Article 16.

<sup>129</sup> EIB Statute, Article 19.

<sup>130</sup> Halász (nr 127) p. 339.

<sup>131</sup> EIB Statute, Article 20 & 21.

<sup>132</sup> EIB Group (nr 125) p. 3.

<sup>133</sup> TFEU, Article 174-175; Consolidated version of the Treaty on the Functioning of the European Union, Protocol (No. 28) on economic, social and territorial cohesion, 5 May 2008, OJ C 115.

development cooperation policy with developing countries.<sup>134</sup> Hence, the EIB is financing projects all over the world.

## 3.3 Structure of the European Investment Bank

### 3.3.1 Governance

The founding statute of the EIB establishes its legal personality and financial autonomy, despite its close relationship with the EU. Hence, the EIB is governed by independent decision-making organs.<sup>135</sup> These constitute four statutory bodies, which comprise three decision-making bodies and one control body, which shall follow the provisions and procedures set out in the Rules of Procedure of the EIB.<sup>136</sup>

The Board of Governors constitutes the highest governing body and is comprised of ministers designated by the Member States, customarily ministers of finance.<sup>137</sup> The EIB is directed by the Board of Governors and they formulate general directives for the credit policy, decide on capital increases and give authorization on the EIBs participation in financing operations outside the EU.<sup>138</sup> The Board of Governors has an accentuated political role, compared to the other bodies, making this body of special importance when incorporating social and environmental standards and human rights considerations.<sup>139</sup> In addition, the Board of Governors appoints the Board of Directors, the Management Committee, and the Audit Committee.<sup>140</sup>

The second decision-making body is the Board of Directors, which consists of 28 directors and 31 alternative directors with the main task to approve financial operations, such as loans or guarantees, and the borrowing program. In addition, treasury operations and policies are reviewed and approved. The Directors shall ensure that the EIB is managed in accordance with the Treaties, the Statute, and the directives presented by the Board of Governors.<sup>141</sup>

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<sup>134</sup> TFEU, Article 209(1-3); TFEU Protocol No. 28.

<sup>135</sup> Amoyel (nr 22) p. 259.

<sup>136</sup> EIB, '*Rules of Procedure of the European Investment Bank*', approved 4 December 1958, last amended on 13 September 2021. Available at: [www.eib.org/attachments/publications/rules\\_of\\_procedure\\_2021\\_en.pdf](http://www.eib.org/attachments/publications/rules_of_procedure_2021_en.pdf) (accessed: 2 February 2022).

<sup>137</sup> EIB Statute, Article 7(1-2) & 7(3)(e).

<sup>138</sup> EIB, '*The Innovation Response: 2021 Activity Report*' 27 January 2022. Available at: [www.eib.org/attachments/publications/eib\\_activity\\_report\\_2021\\_en.pdf](http://www.eib.org/attachments/publications/eib_activity_report_2021_en.pdf) (accessed: 24 January 2022), p. 59.

<sup>139</sup> Amoyel (nr 22) p. 259.

<sup>140</sup> EIB Statute, Article 7(1-2) & 7(3)(e); EIB (nr 138) p. 59.

<sup>141</sup> EIB Statute, Article 9(1-2); EIB (nr 138) p. 59.

The third decision-making body is the Management Committee, which audits the daily activities and is responsible for verifying the operations of the EIB. The Committee prepares decisions of the Board of Directors and ensures its implementation. The Management Committee answers to the Board of Governors and is monitored by the Board of Directors.<sup>142</sup>

The Audit Committee represents the control body, which independently audits and verifies that the EIB conforms to best banking practices. The EIB Best Banking Practice Guiding Principles were adopted by the Board of Governors to clarify and reinforce the best banking practice framework, which defines the principles and scope of banking rules applicable to the EIB.<sup>143</sup> The principles are based on legal and regulatory rules that can be found in the Treaties, the Statute, the Rules of Procedures as well as EU banking regulations and directives.<sup>144</sup> Areas such as prudential requirements, internal organisation, control mechanisms, risk-taking, business conduct, and reporting are covered.<sup>145</sup> Hence, the Audit Committee shall verify that the operations performed by the EIB comply with to the procedures laid out in the Statute and the Rules of Procedures, as well as the best banking principles.<sup>146</sup>

### **3.3.2 Legal Personality**

The status of the EIB, along with other MDBs, in international law is symbolized by its “dual character”. MDBs are foremost recognized as international organisations, as they are established by States through a treaty or other instrument governed by international law and possess their own international legal personality.<sup>147</sup> The EIB is authorized through Article 308 TFEU which recognizes its legal personality, making it a subject under international law.<sup>148</sup> However, the dual character of MDBs stems from the fact that they also engage in financial transactions, similar to activities performed by private commercial entities.<sup>149</sup> International organisations are governed by the principle of competence, meaning that their legal personality

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<sup>142</sup> EIB Statute, Article 11(3); EIB (nr 138) p. 59.

<sup>143</sup> EIB, '*Best Banking Practice Guiding Principles of the European Investment Bank*' 3 October 2018. Available at: [www.eib.org/attachments/general/best\\_banking\\_practice\\_guiding\\_principles\\_en.pdf](http://www.eib.org/attachments/general/best_banking_practice_guiding_principles_en.pdf) (accessed: 3 March 2022) para. G.

<sup>144</sup> EIB Group (nr 125) p. 13.

<sup>145</sup> Halász (nr 127) p. 332.

<sup>146</sup> EIB Statute, Article 12(1-2); EIB (nr 138) p. 59.

<sup>147</sup> International Law Commission (ILC) *Draft Articles on the Responsibility of International Organizations*, UN Doc. A/66/10, 2011, Article 2(a); Williams-Elegbe, S. (nr. 16) p. 30-31.

<sup>148</sup> TFEU, Article 308(1).

<sup>149</sup> Williams-Elegbe (nr 16) p. 31.

is limited to the common interest entrusted to the organisation by its founding States.<sup>150</sup> The power of MDBs is therefore limited to what is necessary to fulfil the needs of the States that established the international organisation as defined in their constituent instrument.<sup>151</sup> Hence, the legal personality of the EIB creates the capacity to contract and carry out actions to fulfil the task outlined in the Treaties.<sup>152</sup>

Furthermore, the legal personality of international organisations entails responsibility for acts causing harm to third parties under international law.<sup>153</sup> The liability of international organisations under international law is ambiguous but it was further elucidated in the Draft Articles of the International Law Commission which recognize international responsibility for internationally wrongful acts committed by international organisations.<sup>154</sup> The Draft Articles define an internationally wrongful act as conduct consisting of an action or omission by an international organisation, which is attributable to an organisation under international law and represents a breach of an international obligation of that organisation.<sup>155</sup> The Draft Principles further recognize that an international organisation shall be held responsible for every internationally wrongful act conducted by that organisation.<sup>156</sup> Hence, the legal personality of international organisations does not entail a possibility for the Member States to elude joint responsibility for their conduct. Furthermore, it is not authorized to violate the principles they are founded to serve.<sup>157</sup>

Additional questions have been raised about the legal personality of the EIB, due to its close affiliation to the EU. The founding statute of the EIB established the Bank's legal personality and financial autonomy, thereby distinguishing the EIB from the EU. The European Court of Justice (ECJ) defined the position of the EIB in the case *Commission of the European Communities v. Board of Governors of the European Investment Bank* in 1988. The ECJ stated that the EIB must hold complete independence on the financial market and its own affairs to perform the main tasks assigned to it, just like any other commercial bank. However, the ECJ

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<sup>150</sup> International Court of Justice, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion of 8 July 1996, ICJ Reports, para. 25.

<sup>151</sup> Williams-Elegbe (nr16) p. 33.

<sup>152</sup> Ibid, p. 33.

<sup>153</sup> Suzuki E & Nanwani S, 'Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks' (2005) *Michigan Journal of International Law*, Vol 27, Issue 5, p. 179.

<sup>154</sup> Draft Articles on the Responsibility of International Organisations (2011) *Yearbook of the International Law Commission*, Vol II, Part II.

<sup>155</sup> Ibid, Article 4.

<sup>156</sup> Ibid, Article 3.

<sup>157</sup> Suzuki & Nanwani (nr 153) p. 179.

also recognized the ambivalent position of the EIB due to its close link with the EEC. The ECJ concluded that the EIB is not totally separated from other EEC institutions despite its extensive degree of institutional autonomy, as the original Treaty of Rome establishes that one of the main objectives of the EIB is to contribute to the attainment of the objectives set out by the EEC, which is currently established in Article 309 TFEU. Consequently, the EIB is a part of the EEC framework (and currently the EU framework).<sup>158</sup> The ambivalent character of the EIB was once again examined in the case *Commission of the European Communities v. European Investment Bank* in 2003. The ECJ underlined that the EIB enjoys operational and institutional autonomy. However, the ECJ emphasized that this autonomy does not imply that the EIB is exempt from every rule established in EU law and the autonomy of the EIB does not constitute a total separation between the EU and the EIB.<sup>159</sup>

Hence, Article 308 and Article 309 TFEU include a contradiction. Article 308 TFEU implies that the EIB shall be distinct from the EU itself, granting the EIB an international legal personality, in particular in the sphere of financial operations. The EIB is governed by its Statute and an autonomous corporate structure. However, Article 309 establishes that the EIB shall contribute to the main objectives of the EU which, according to the EJC, creates a close link with the EU. Hence, the EIB enjoys some form of autonomy, but the nature of its independence remains ambiguous. What kind of decisions and operations can the EIB carry out as an autonomous bank, and what is the obligation of the EIB due to its position as an EU institution? How does the EIBs multi-faceted mandate affect its financial practices, more specifically related to human rights and environmental considerations, such as the right to a healthy environment? This distinction remains somewhat disputed and will be further examined in the next section.

### **3.4 Obligations as an Institution of the European Union**

MDBs, including the EIB, have been severely criticized for failing to take into consideration of environmental and human rights in their operational policies and practices. The disregard of human rights has often been motivated by claiming that these considerations do not enter the

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<sup>158</sup> European Court of Justice (ECJ) *Commission of the European Communities v. Board of Governors of the European Investment Bank*, Judgment of the Court of 3 March 1988, case 85/86, para. 28-30.

<sup>159</sup> ECJ, *Commission of the European Communities v. European Investment Bank*, Judgment of the Court of 10 July 2003, case c-15/00, para. 102.

sphere of financial operations, as human rights have been assumed to be political concerns.<sup>160</sup> The EIB has relied on its position as an autonomous institution concerning its financial matters to neglect human rights concerns, even though the EU has been pushing the EIB to further include environmental concerns into its financial activities.<sup>161</sup> Even though the EIB is, to a certain extent, an autonomous financial institution, it is bound by the EU human rights framework. It is thereby necessary to clarify the limits of the EIB's independence, to establish the human rights obligation of the EIB and how this shall be incorporated into its financial activities. This section will examine the applicable human rights framework in the context of the right to a healthy environment, and how this affects the human rights obligations of the EIB.

### 3.4.1 The Charter of Fundamental Rights of the European Union

Human rights considerations were not mentioned in the founding Treaties, as the EU was conceived with a predominantly economic focus. It is only later that human rights and environmental considerations were gradually incorporated into the EU framework.<sup>162</sup> Human rights obligations mainly stem from the institutions' own internal legal order. The Charter forms the central binding human rights instrument, but its overall commitment to human rights can be found in the Union's many legislative and policy documents.<sup>163</sup> The Charter constitutes binding EU law and clearly defines the set of rights and freedoms that possess this level of protection. In addition, the Charter signifies a point of reference for EU policymaking, which benefits the development to mainstreaming of fundamental rights throughout the EU.<sup>164</sup> Article 51(1) of the Charter establishes the field of application, which binds all institutions, bodies, offices, and agencies of the EU to respect the rights and promote the application of the Charter. Hence, the EIB is bound by the Charter and obligated to respect, observe, and promote these rights and principles, despite its extensive degree of institutional autonomy.

Article 37 of the Charter provides that a high level of environmental protection must be integrated into the policies of the EU and shall be ensured following the principle of sustainable

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<sup>160</sup> Buntaine M.T, *Giving Aid Effectively: The Politics of Environmental Performance and Selectivity at Multilateral Development Banks* (Oxford University Press, 2016), p. 2; Amoyel (nr 22) p. 255.

<sup>161</sup> Hachez N & Wouters J, 'A responsible lender? The European Investment Bank's environmental, social, and human rights accountability' (2012) *Common Market Law Review*, Vol. 47, Issue 1, p. 47-95, p. 62.

<sup>162</sup> Wouters J & Ovádek M, 'The Emergence of the EU's Commitment to Human Rights' in Wouters & Ovádek M, *The European Union and Human Rights: Analysis, Cases and Materials* (Oxford Scholarship Online, 2021) p. 2.

<sup>163</sup> Charter of Fundamental Rights of the European Union (EU Charter), 26 October 2012, 2012/C 326/02; Jan Wouters & Ovádek (nr 162) p. 1.

<sup>164</sup> Wouters & Ovádek (nr 162) p. 102.

development. Hence, Article 37 constitutes a principle rather than a right. The field of application has a mainstreaming nature, requiring all EU institutions to integrate a high level of environmental protection into all policies adopted, both internal and external.<sup>165</sup> Article 37 of the Charter shall be interpreted in a broader context of environmental principles of EU law, most apparently Article 11 and 191 TFEU which applies to the EIB according to Article 1 of the EIB Statute.<sup>166</sup> Article 11 TFEU establishes the integration principle, entailing that environmental protection shall be integrated into the policies and activities carried out by the EU to promote sustainable development. The principle of integration shall be inferred from Article 191 TFEU, which establishes that the EU shall contribute to certain environmental objectives and principles. The Article includes a precautionary principle, a principle of prevention, and the polluter pays principle.<sup>167</sup> These principles are defined in broad terms, suggesting that the EU legislator enjoys a wide margin of appreciation when deciding on environmental measures. Consequently, EU institutions define the substantive content of EU environmental policy when adopting measures according to the Treaty objectives.<sup>168</sup>

What is the legal role of environmental principles, especially Article 37 of the Charter, and to what extent does this impose a legal obligation upon EU institutions? Article 37 and Article 11 TFEU impose a general legal obligation to apply environmental objectives in all EU policies in a systematic and integrated manner, as the integration clause use the terms “must be integrated”. This integration obligation in Article 11 is to be inferred from the EU environmental objectives in Article 191 TFEU.<sup>169</sup> However, the legal role is undermined as Article 37 of the Charter, including Article 11 and 191 TFEU, remain a principle rather than a legally enforceable right, even though it offers a certain degree of environmental protection.

The Charter does not explicitly guarantee a right to a healthy and sustainable environment, which means that EU law fails to recognize a substantial environmental right and to establish an individually enforceable right to environmental protection.<sup>170</sup> However, one could argue that

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<sup>165</sup> Marín Durán G & Morgera E 'Commentary on Article 37 of the EU Charter of Fundamental Rights – Environmental Protection' (2013) *Edinburgh School of Law Research Paper Series*, No. 2013/20, p. 4.

<sup>166</sup> Scotford E, 'Environmental Rights and Principles: Investigating Article 37 of the EU Charter of Fundamental Rights' in Bogojevic S & Rayfuse R (ed.) *Environmental Rights in Europe and Beyond* (Hart Publishing, 2018), p. 143; Article 1 of the EIB Statute stipulates that the EIB shall perform its functions and carry on its activities in accordance with the provisions of the Treaties and the EIB Statute.

<sup>167</sup> Scotford (nr 166) p. 143.

<sup>168</sup> Marín Durán & Morgera (nr 165) p. 13.

<sup>169</sup> *Ibid*, p. 17.

<sup>170</sup> *Ibid*, p. 11.



the environmental protection in Article 37 of the Charter is more far-reaching as the Charter broadly mirrors ECHR rights.<sup>171</sup> The ECHR has in many ways shaped the Charter which has created an overlap between the rights recognized in the different instruments.<sup>172</sup> The close relationship between the Charter and the ECHR is recognized in Article 52(3) of the Charter, which emphasizes that the rights in the Charter shall be interpreted in harmony with the ECHR. Hence, the jurisprudence by the ECtHR can be used to interpret the Charter rights in case of overlapping provisions.<sup>173</sup>

As developed in chapter 2, environmental rights have been introduced into human rights law in two different ways. Either through the adoption of a new right, generally called the right to a healthy environment, or by interpreting already existing rights in the context of environmental issues. The right to a healthy environment is neither recognized in the Charter nor the ECHR, but the ECtHR has recurrently referred to the right to a healthy environment when interpreting violations of other rights and has ruled that the right to environmental protection relating to the fundamental rights enshrined by the ECHR.<sup>174</sup> Hence, the jurisprudence of the ECtHR has been important for the development of human rights-based environmental protection through the “greening” of other rights. The ECtHR has interpreted indirect protection to environmental matters through Article 2 ECHR on the right to life,<sup>175</sup> Article 8 on the right to respect for private and family life,<sup>176</sup> and Article 1 of Protocol No. 1 on the protection of property.<sup>177</sup> This jurisprudence is significant when interpreting corresponding Charter rights, as they shall be given the same “meaning and scope” according to Article 52(3) of the Charter.<sup>178</sup> Hence, the interrelationship between the Charter and the indirect protection of environmental issues in the ECHR gives the Charter a more far-reaching environmental protection.<sup>179</sup> However, the ECtHR

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<sup>171</sup> Hilson (nr 38) p. 91.

<sup>172</sup> van Zeven J, ‘The Role of the EU Charter of Fundamental Rights in Climate Litigation’ (2021) *German Law Journal*, Vol. 22, Issue 8, p. 1501.

<sup>173</sup> Ibid, p. 1501.

<sup>174</sup> For an extensive list of jurisprudence by the ECtHR, see: Council of Europe, ‘*Manual on Human Rights and the Environment: Principles emerging from the case law of the European Court of Human Rights and the conclusions and decisions of the European Committee of Social Rights*’, February 2022. Available at: [www.rm.coe.int/manual-environment-3rd-edition/1680a56197](http://www.rm.coe.int/manual-environment-3rd-edition/1680a56197) (accessed: 25 April 2022).

<sup>175</sup> E.g., *L.C.B v. United Kingdom*, Application No. 23413/94, Judgment of 9 June 1998, para. 36; *Paul and Audrey Edwards v. United Kingdom*, Application No. 46477/99, Judgment of 14 March 2002, para. 54; *Öneryildiz v. Turkey*, Application No. 48939/99, Judgment of 30 November 2004, para. 71.

<sup>176</sup> E.g., *Brândușe v. Romania*, Application No. 39951/08, Judgment of 7 April 2009, para. 67; *Hatton v. United Kingdom*, Application No. 36022/97, Judgment of 8 July 2003, para. 96-104.

<sup>177</sup> E.g., *Fredin v. Sweden*, Application No 12033/86, Judgment of 18 February 1991, para. 48; *Depalle v. France*, Application No. 34044/02, Judgment of 29 March 2010, para. 81; *Brosset-Triboulet and others v. France*, Application No. 43078/02, Judgment of 29 March 2010, para. 84.

<sup>178</sup> Marín Durán & Morgera (nr 165) p. 5.

<sup>179</sup> Ibid, p. 5

has stressed that national authorities shall enjoy wide discretion when assessing and acting on environmental issues, with the motivation that national authorities are best placed to act on environmental issues. The scope of the margin of appreciation has not been clarified by the ECtHR, creating uncertainty about how and when the right to a healthy environment shall be applied.<sup>180</sup>

This thesis finds that clear recognition of a substantive right to a healthy environment is needed in a European context. Firstly, the recognition of the right to a healthy environment would clarify the meaning and scope of the right. The ECtHR has incorporated a human rights approach to environmental matters in its jurisprudence, but an individually justiciable right to environmental protection would simplify the procedure for individuals and other relevant stakeholders to access their human right to a healthy environment. The failure to recognize the right to a healthy environment indicates a lack of engagement with the issue at hand, which is to ensure environmental protection and protect the life and health of individuals. The EU, and the EIB, claim to be at the forefront of environmental protection which is contradictory given how both are trying to frame their environmental rights obligations in a vague and undefined manner. Hence, a statement by the EU to adopt a clear and well-defined human right to the environment would be highly desirable, since it would indicate that environmental rights are an interest worthy of protection and special recognition.

Secondly, the recognition of the right to a healthy environment would also clarify the obligations of EU institutions. As presented in this section, the EIB is bound by the principle defined in Article 37 of the Charter, and in addition, by the interpretation made by the ECtHR and their recognition of the right to a healthy environment when interpreting corresponding rights. Consequently, the Charter establishes more far-reaching environmental protection and wider human rights obligations vis-à-vis the EIB. However, there are reasons to be a bit sceptical about how far-reaching this additional environmental protection actually is. As will be shown in chapter 4, the EIB defines its obligations on human rights protection through EU law, which shall be aligned with the Treaty objectives and (sometimes) the Charter, not the jurisprudence of the ECtHR. Will the jurisprudence of the ECtHR impact the practical application of the Charter? Maybe, but the explicit recognition of the right to a healthy

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<sup>180</sup> *Hatton and others v. United Kingdom*, paras. 97-104; van Zeben (nr 172) p. 1502.

environment in the Charter would require all EU institutions to guarantee an individual environmental right in a much clearer manner than now.

### 3.4.2 The Aarhus Convention

Another limitation of the Charter is the failure to recognize any binding procedural environmental rights. However, the EU and its Member States are bound by the Aarhus Convention, which is a legally binding instrument that establishes the individual right to “an environment adequate to his or her health and well-being”. Hence, the Aarhus Convention recognizes the substantive right to a healthy environment, but only as a rationale for guaranteeing procedural environmental rights.<sup>181</sup>

The obligations of the EIB to the Aarhus Convention were clarified by the General Court of the Court of Justice of the European Union (CJEU or the Court) in a decision on 27 January 2021. The case *ClientEarth v European Investment Bank* concerns the construction of a biomass power generation plant in Spain in 2016, the so-called Curtis project.<sup>182</sup> A resolution was adopted by the Board of Directors on 12 April 2018, approving the financing proposal of the Curtis project of a maximum amount of €60 million. The resolution constituted a preliminary approval of the financing which, according to the EIB, did not create any legal obligations to provide the loan. The EIB claims that the resolution merely allowed the parties to initiate the formalization of the loan.<sup>183</sup> The contract documentation for the financing of the Curtis project was signed on 25 July 2018 and the first disbursement took place on 29 August 2018.<sup>184</sup>

A complaint was submitted to the CJEU by ClientEarth, a non-governmental organisation working for the protection of the environment.<sup>185</sup> ClientEarth requested an internal review to see if the resolution adopted in 2018 was in accordance with Article 10 of the Aarhus Regulation.<sup>186</sup> The EIB rejected the petition for an internal review claiming that the resolution

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<sup>181</sup> Aarhus Convention, Article 1.

<sup>182</sup> Court of Justice of the European Union (CJEU), *ClientEarth v European Investment Bank*, Judgement of the General Court (Second Chamber, Extended Composition) of 27 January 2021, case T-9/19, para. 37.

<sup>183</sup> *ClientEarth v European Investment Bank* (nr. 182) paras. 53 & 47.

<sup>184</sup> *Ibid*, paras. 50–51.

<sup>185</sup> *Ibid*, para. 52.

<sup>186</sup> European Parliament, *Regulation (EC) No. 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (the Aarhus Regulation)*, 6 September 2006, OJ L 264; According to Recital 4 the Aarhus Regulation was the Aarhus Regulation was adopted to contribute to the achieving of the objectives of the Aarhus Convention and the provisions are made to apply the requirements of the Convention to EU institutions. Under Article 10(1) of the Aarhus Regulation may any non-governmental organization, which meets the criteria set out in Article 11 of the

did not constitute an “administrative act” defined under Article 2(1)(g) of the Aarhus Regulation as the resolution did not have any legally binding external effects on a third party and had not been adopted “under environmental law” within the meaning of Article 2(1)(f). The EIB argued that the resolution was characterized as an internal act, where the request for internal review according to Article 10 of the Aarhus Regulation does not apply.<sup>187</sup>

The Court emphasized that EU law shall be interpreted consistently with international law. It also underlined that the objective pursued through the Aarhus Regulation is to guarantee wide access to justice, but also to pursue the objective to preserve, protect and improve the quality of the environment as set out in Article 191(1) TFEU.<sup>188</sup> The Court also examined whether the resolution met certain conditions necessary to be characterized as an “administrative act”, firstly assessing whether there had been an incorrect application of the condition that the act must be adopted “under environmental law”.<sup>189</sup> Environmental law as defined in Article 2(1)(f) and infer EU law which contributes to the objectives of EU policy set out in the TFEU relating to the environment, implying that Article 2(1)(f) of the Aarhus Regulation shall be broadly interpreted. Hence, the concept of environmental law shall not be limited to matters directly linked to the protection of the environment in a strict sense.<sup>190</sup> The Court established, after reviewing the financing proposal and resolution, that the Curtis project concerned renewable energy and achieving environmental objectives thereby clearly supporting the EU objectives and the EIBs own criteria for a project relating to the environment.<sup>191</sup>

The Court subsequently assessed whether the condition that the act produced “legally binding and external effects” according to Article 2(1)(g) of the Aarhus Regulation had been fulfilled. After reviewing the content of the resolution and the context in which it was adopted, the Court found that the resolution reflected the definite position of the EIB on the eligibility of the Curtis project for EIB financing regarding its environmental and social aspects. Hence, even if other technical, economic, and financial aspects were still to be discussed, the resolution did produce certain definite legally binding effects on third parties.<sup>192</sup> Thus, the resolution was to be

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Aarhus Regulation, submit a reasoned request, and trigger an internal review of an administrative act by the EU institution that adopted it under environmental law.

<sup>187</sup> *ClientEarth v European Investment Bank* (nr. 182) paras. 58–59.

<sup>188</sup> *Ibid*, para. 107.

<sup>189</sup> *Ibid*, para. 109.

<sup>190</sup> *Ibid*, para. 118.

<sup>191</sup> *Ibid*, paras. 129 & 139.

<sup>192</sup> *Ibid*, para. 170.

categorised as an “administrative act” defined under Article 2(1)(g) of the Aarhus Regulation. The Court thereby ruled that the EIB must accept the petition for internal review by ClientEarth, according to its obligations under the Aarhus Convention, a decision that can improve the position of civil society and stakeholder engagement in the implementation of EU law.

The EIB is bound by the procedural environmental rights recognized in the Aarhus Convention, and the case *ClientEarth v European Investment Bank* illustrates how the EIBs human rights obligation can affect its financial practices. This vital judgment clarifies the position of the EIB under EU law and ruled that finance decisions may be subject to the request for internal review over its potential environmental harm according to the Aarhus Regulation when a lawful request is made. The case also clarifies the light in which the Aarhus Conventions shall be interpreted in an EU context, which is to pursue the objectives to preserve, protect and improve the quality of the environment as set out in Article 191(1) TFEU.<sup>193</sup> This case sends an important statement, as the substantive right to “an environment adequate to his or her health and well-being” is mentioned in the Aarhus Convention as a rationale for guaranteeing procedural environmental rights, which is the clearest statement of the right to a healthy environment in international law according to the Implementation Guide to the Aarhus Convention.<sup>194</sup>

Even though the EU or the EIB has not explicitly recognized the right to a healthy environment, the findings presented above suggest that the EIB is obligated to respect the substantive right to a healthy environment as it is bound by the Charter and the ECHR as presented in chapter 3.4.1. However, this section has demonstrated the clear obligation to guarantee procedural environmental rights as outlined in the Aarhus Convention. These obligations are of vital importance, as procedural rights are key for the promotion and protection of the substantive aspect of the right to a healthy environment. It is also important to ensure that the right to a healthy environment is adequately protected within EIB operations. This issue will be further discussed in the remainder of this thesis, especially in chapter 5.2.2 on environmental transparency and accountability within the EIB, where this thesis argues that the EIB has adopted inadequate measures to fulfil its procedural obligations.

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<sup>193</sup> Ibid, para. 107.

<sup>194</sup> UNECE (nr 75) p. 43.

### **3.5 Concluding Remarks**

The EIB is a supranational financial institution founded by the EU Member States with the task to foster economic development aid and promote progress by financing projects, supporting investments, and generating capital. The EIB has a significant role in major investment projects as the biggest multilateral lender in the world, as they provide remarkable volumes of financial support intending to facilitate economic growth and development. This chapter has introduced the specific regulatory framework applicable to the structure and operations executed by the EIB to create a better understanding of the institution.

The focus of this chapter has been on the EIB's legal personality, as an autonomous MDB and an EU institution, and how its multi-faceted mandate affects its human rights obligations. This chapter also presents a discussion on the human rights obligations of the EIB and concludes that even though the EU or the EIB has not explicitly recognized the right to a healthy environment, the findings presented in this chapter suggest that the EIB is obligated to respect the right to a healthy environment, as it is bound by the Charter and the Aarhus Convention. With this understanding of the EIB, the next chapter will study how the EIB has adopted internal environmental frameworks to further incorporate environmental considerations into its lending activities.

# 4 Sustainable Finance

## 4.1 Introduction

Climate change constitutes an alarming matter which requires an immediate upscale of climate mitigation and adaption to reach the goal of limiting global warming to 1.5°C pre-industrial levels according to the Paris Agreement.<sup>195</sup> One of the main limitations for adaption across all regions and sectors is financial constraints. Hence, the transition of global financial flows from public and private finance toward greener investments is a vital measure to achieve human adaption.<sup>196</sup> This transition requires the engagement of financial actors, such as MDBs. The important role of MDBs has gained additional attention when discussing the transition to a sustainable economy. Firstly, due to the acknowledgement of the immense environmental impacts related to the funding of MDBs. Secondly, their ability to transform financial flows into sustainable and green projects, makes MDBs a vital player in climate change mitigation to lead the transition to an environmentally sustainable economy, mainly through sustainable finance.<sup>197</sup>

The concept of sustainable or climate finance has emerged as a response to climate change and other social challenges to promote a rapid transition towards a sustainable economy. Sustainable finance constitutes an umbrella term that contains concepts related to ethical and socially responsible finance in various sectors. Hence, the meaning of sustainable finance varies widely between sectors.<sup>198</sup> MDBs, including the EIB who initially proclaimed its status as an autonomous bank in relation to the EU legal order, have historically been reluctant to include human rights and environmental standards into their lending policies making the concept of climate finance a relatively new concept within this sector. However, this field has gone through a transition as MDBs constitute the majority deliverer of public climate finance, contributing to 68% of global climate finance.<sup>199</sup>

The International Development Finance Club (IDFC) clarified the meaning of sustainable finance related to climate change mitigation for MDBs in the Common Principles for Climate

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<sup>195</sup> IPCC (nr 1) para. C.1.

<sup>196</sup> Ibid, para. C.3.2; Paris Agreement, Article 2(1)(c).

<sup>197</sup> Giglio, Kelly & Stroebel (nr 20) p. 2.

<sup>198</sup> La Torre & Chiappini (nr 18) p. 1.

<sup>199</sup> CPI (nr 21) p. 3.

Mitigation Finance Tracking which was adopted in 2015. The IDFC includes the EIB, the World Bank, the EBRD, the AfDB, and the ADB.<sup>200</sup> According to the IDFC, sustainable finance shall promote climate change mitigation, which entails activities where GHG and CO<sub>2</sub> emissions are avoided or reduced and activities that contribute to the stabilization of greenhouse concentrations to prevent dangerous interference with climate systems. There are three categories of climate change mitigation activities. Firstly, negative- or low emission activities, which entails activities that have negative or near-zero greenhouse gas emissions and are consistent with the long-term temperature goal of the Paris Agreement. Secondly, transitional activities, which involve activities that contribute to the transition to a climate-neutral economy, such as energy efficiency improvement in manufacturing. Lastly, enabling activities, that is to say, activities that are necessary for developing or implementing other eligible climate mitigation activities, e.g., manufacture of net-zero target technologies.<sup>201</sup> In addition, every bank has formed its definition of sustainable finance to trace the amount of sustainable and/or climate finance they handle, which has been developed into internal frameworks regarding these issues.<sup>202</sup>

The EIB initially kept a low profile about matters concerning the environment and human rights, proclaiming its status as an autonomous bank to the EU legal order. This changed as the EIB started to clarify its position on human rights and environmental considerations after pressure from other EU institutions, such as the European Parliament and the European Council, and civil society.<sup>203</sup> The EIB claims to promote a rapid transition towards a sustainable economy by taking environmental and human rights considerations when conducting financial activities. For example, the EIB now claims to support the SDGs when conducting sustainable funding within and outside the EU.<sup>204</sup> Furthermore, the EIB claims to support the United Nations “Protect, Respect and Remedy” Framework, which is the Guiding Principles on Business and Human Rights.<sup>205</sup> According to the EIB, a series of seminars on the topic of

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<sup>200</sup> OECD (nr 24) p. 29.

<sup>201</sup> International Development Finance, ‘*Common Principles for Climate Mitigation Finance Tracking*’ 18 October 2021. Available at: [www.eib.org/attachments/documents/mdb\\_idfc\\_mitigation\\_common\\_principles\\_en.pdf](http://www.eib.org/attachments/documents/mdb_idfc_mitigation_common_principles_en.pdf) (accessed: 28 February 2022), p. 4.

<sup>202</sup> OECD (nr 24) p. 29.

<sup>203</sup> Hachez & Wouters (nr 161) p. 62.

<sup>204</sup> EIB, ‘*The European Investment Bank’s contribution to the Sustainable Development Goals*’, 19 January 2022. Available at: [www.eib.org/attachments/publications/eibs\\_contribution\\_to\\_the\\_sustainable\\_development\\_goals\\_en.pdf](http://www.eib.org/attachments/publications/eibs_contribution_to_the_sustainable_development_goals_en.pdf) (accessed: 19 May 2022).

<sup>205</sup> UN Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, HR/PUB/11/04, 2011.



business and human rights was facilitated in 2010 and claims to undertake a review of its internal frameworks in light of the guiding principles.<sup>206</sup>

Most importantly for this thesis, the EIB has adopted internal frameworks to clarify its position on social and environmental matters. These frameworks clarify how the EIB supports the EU's environmental policies, its measures to distribute sustainable financing, and how human rights and environmental considerations, influence its financing assessments. Despite this rapid change over the last 20 years, the EIB has been criticized regarding its environmental frameworks and has been questioned whether these frameworks make practical differences in its financial activities. The first section will examine the incorporation of environmental frameworks within the EIB and examine some of the most relevant policies to give a general view of these developments, but also to highlight the critique directed at these frameworks. For the purpose of the thesis, a selection has been made to give an understanding of the development to incorporate environmental considerations within the EIB. Hence, the frameworks presented do not constitute an exhaustive list. The next section examines the EU strategy for tackling climate change, the *European Green Deal*, which is essential for the understanding of the EIBs latest and most comprehensive environmental framework, the *EIB Group Climate Bank Roadmap 2021-2025* (CBR).

## **4.2 Sustainable Finance and the European Investment Bank**

### **4.2.1 Promote the Sustainable Development Strategy**

One of the main official steps to include standards on the environment and climate change was taken in 2001 when the European Council acknowledged that emissions of greenhouse gas are contributing to global warming. The Council invited the EIB to promote the Sustainable Development Strategy (the Strategy). The Strategy was adopted by the EU to examine and coordinate economic, social, and environmental effects in decision-making to better reflect the true cost to societies of goods and services. According to the Strategy, measures shall be adopted to achieve the objective of sustainable development which is recognized as a fundamental objective of the EU under Articles 191 and 192 TFEU.<sup>207</sup> Hence, the EIB was

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<sup>206</sup> EIB, 'The EIB approach to human rights' [website]. Available at: [www.eib.org/en/press/news/business-and-human-rights](http://www.eib.org/en/press/news/business-and-human-rights) (accessed: 19 May 2022).

<sup>207</sup> Göteborg European Council, *Presidency Conclusions*, 15 & 16 June 2001, SN 200/1/01/REV 1, paras. 19 & 22.

invited to further target investments aiming at protecting the planet from the effects of climate change. The EIB was also requested to cooperate with the European Commission in implementing EU policies on climate change.<sup>208</sup> Since 2002 the EIB and the Commission have coordinated their efforts to implement the EU's environmental policy.<sup>209</sup>

#### **4.2.2 Environmental and Social Principles and Standards**

The EIB adopted environmental and social standards in 1996, 2002, and 2004 to clarify its commitment to protecting the environment and climate change mitigation. This was further developed in the Statement on Environmental and Social Principles and Standards (the 2009 Statement) approved by the Board of Directors in 2009.<sup>210</sup> The 2009 Statement was adopted as a response to the increasing prominence given to social and environmental considerations within the EU, which should permeate the operational practices of the EIB as well as its priority lending objectives.<sup>211</sup> The 2009 Statement requires compliance with these environmental and social standards for all funding granted by the EIB and shall be applied by the staff of the EIB in all its operations.<sup>212</sup> The 2009 Statement is complemented by the Environmental and Social Practices Handbook which translates the principles of the Statement into the operations practices performed by the EIB.<sup>213</sup>

The EIB establishes that EU law is supplemented by other frameworks of international good practice, such as the fundamental human rights enshrined in the Charter.<sup>214</sup> The nexus between the Charter is more apparent concerning the social standards, where the EIB takes a human rights-based approach.<sup>215</sup> Regarding the environmental standards, the 2009 Statement emphasizes that EU environmental law constitutes the main source of its environmental

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<sup>208</sup> Ibid, para. 28.

<sup>209</sup> European Investment Bank (EIB), *'EIB Sustainable Development and Environment Documents'* 31 July 2002. Available at: [www.eib.org/en/publications/sustainable-development-environment-docs](http://www.eib.org/en/publications/sustainable-development-environment-docs) (accessed: 29 March 2022).

<sup>210</sup> EIB, *'The EIB Statement of Environmental and Social Principles and Standards'* 16 February 2009. Available at: [www.eib.org/en/publications/environmental-and-social-principles-and-standards](http://www.eib.org/en/publications/environmental-and-social-principles-and-standards) (accessed 29 March 2022) para. 6.

<sup>211</sup> Ibid, paras. 2-3.

<sup>212</sup> Ibid, paras. 45-55. The environmental standards of the EIB are intended to protect and enhance the natural environment, where EU law is the benchmark for Bank purposes. The standards listed in the Statement is: emissions standards, ambient standards, and procedural standards, see para. 31-35. The social standards aim to protect the rights and enhance the livelihoods of people directly and indirectly affected by projects financed by the EIB. The standards listed in the Statement is: involuntary resettlement, indigenous people and other vulnerable groups, labour standards, occupational community health and safety.

<sup>213</sup> 2009 Standards (nr 210) para. 11.

<sup>214</sup> Ibid, para. 15.

<sup>215</sup> Ibid, para. 46.

principles, specifically referring to the integration principle, the precautionary principle, and the principle of prevention as recognized in the TFEU.<sup>216</sup> However, the 2009 Statement does not refer to Article 37 of the Charter concerning the environmental standards even though the EIB is bound by the Charter, as pointed out in chapter 3.4.1. Article 37 of the Charter is highly relevant as it provides that a high level of environmental protection must be integrated into the policies of the EIB, which shall be ensured in accordance with the principle of sustainable development. The field of application has a mainstreaming nature, requiring all EU institutions to integrate a high level of environmental protection into all policies adopted, both internal and external.<sup>217</sup> However, the EIB exclusively uses EU environmental law as a source, without reference to Article 37 of the Charter. Hence, the 2009 Statement neglects to incorporate a human rights-based approach concerning environmental matters.

The 2009 Statement went through an operative translation in 2018 and then again in 2022, a decision made by the EIB's Board of Directors. The framework is now called the Environmental and Social Standards (2022 Standards). The 2022 Standards are a part of the EIB Group Environmental and Social Sustainability Framework. The 2022 Standards are currently grouped in eleven thematic areas, related to environmental and social matters, which sets out the requirements that all projects and promoters must meet to receive EIB funding.<sup>218</sup> The 2022 Standards were presented in time for the launch of EIB Global at the beginning of 2022. EIB Global constitutes a new branch of the EIB that will cover its operations outside Europe which is dedicated to sustainable finance, climate actions, innovative investments, and sustainable living.<sup>219</sup>

These new efforts have brought some improvements but have nevertheless been criticized, and the critique discussed earlier in this section remains relevant. A joint letter was sent to the EIB's Board of Directors from 22 civil society groups, urging the EIB to improve certain key areas of

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<sup>216</sup> Ibid, paras. 23-27; TFEU, Article 11 & 191.

<sup>217</sup> Marín Durán & Morgera (nr 165) p. 4.

<sup>218</sup> EIB, '*Environmental and Social Standards*' 2 February 2022. Available at: [www.eib.org/attachments/publications/eib\\_environmental\\_and\\_social\\_standards\\_en.pdf](http://www.eib.org/attachments/publications/eib_environmental_and_social_standards_en.pdf) (accessed 22 April); The thematic areas are: Environmental and social impacts and risks; Stakeholder engagement; Resource efficiency and pollution prevention; Biodiversity and ecosystems; Climate change; Involuntary resettlement; Vulnerable groups, indigenous peoples, and gender; Labour rights; Health, safety, and security; Cultural heritage; Intermediated finance.

<sup>219</sup> EIB, '*EIB Global: Partnership worldwide*' 27 January 2022. Available at: [www.eib.org/attachments/publications/eib\\_global\\_flyer\\_en.pdf](http://www.eib.org/attachments/publications/eib_global_flyer_en.pdf) (accessed: 22 April).

the 2022 Standards to prevent environmental harm.<sup>220</sup> Firstly, operationalize the EIB's commitment to human rights. This requires the incorporation of a clear system of human rights due diligence. In addition, the letter proposes that a stand-alone Human Rights Impact Assessment should be required in projects likely to have human rights and the environment.<sup>221</sup>

Secondly, the civil society groups urge the EIB to increase its transparency and environmental due diligence of financial intermediaries' investments. The EIB introduced a new standard on financial intermediaries in the 2022 Standards, which has been long-awaited. A total of €22.6 billion, which constitutes a third of the EIB's investments in 2020, was carried out through financial intermediaries. The use of these investments is difficult to track due to the secrecy of commercial banks.<sup>222</sup> The letter suggests that high-risk sub-projects financed by intermediaries shall be reviewed and approved by the EIB. In addition, intermediaries should be obliged to disclose the environmental information of projects for public scrutiny and accountability.<sup>223</sup> Concerns on the lack of transparency of financial activities through financial intermediaries, such as commercial banks, has also been emphasized by the European Parliament.<sup>224</sup>

Thirdly, the letter suggests keeping particularly vulnerable areas off-limits for investments and to ensure appropriate assessments of projects beyond the EU. The 2022 Standards have been improved in the protection of biodiversity but are criticized for applying double standards for projects within and beyond the EU.<sup>225</sup> Projects within the EU require an assessment to decide whether the project is aligned with EU law, such as the EU Birds and Habitats Directive, not to damage the area around the project.<sup>226</sup> Such an assessment is not required for projects beyond the EU, which may impact legally protected areas of biodiversity value. In addition, the 2022 Standards should include areas that are off-limits for harmful investments to protect endangered ecosystems, such as the Amazon, the Arctic, coral reefs, old-growth forests, and wetlands.<sup>227</sup>

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<sup>220</sup> 'Joint Civil Society Organisations' letter to the EIB Board of Directors on the draft Environmental and Social Sustainability Framework – Call to Action', 25 January 2022. Available at: [www.bankwatch.org/wp-content/uploads/2022/01/Joint-CSOs-letter-to-the-EIB-Board-on-ESSF.pdf](http://www.bankwatch.org/wp-content/uploads/2022/01/Joint-CSOs-letter-to-the-EIB-Board-on-ESSF.pdf) (accessed: 23 April 2022).

<sup>221</sup> Ibid, para. 1.

<sup>222</sup> CEE Bankwatch Network (nr 28).

<sup>223</sup> 'Joint Civil Society Organisations' letter' (nr 220) para. 4.

<sup>224</sup> European Parliament, *European Parliament resolution of 7 July 2021 on control of the financial activities of the European Investment Bank*, 7 July 2021, 2020/2245(INI) para. 41.

<sup>225</sup> CEE Bankwatch Network (nr 28).

<sup>226</sup> Council Directive, 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206.

<sup>227</sup> 'Joint Civil Society Organisations' letter' (nr 220) para. 3.

The double standards applied by the EIB for projects beyond the EU have been criticized in the earlier standards and are still relevant. According to the 2022 Standards, projects financed by the EIB shall comply with national law, applicable EU environmental law, and principles of relevant international environmental conventions incorporated into EU law.<sup>228</sup> However, projects financed in regions beyond the EU do not have the same conditions, especially standards related to environmental protection. According to the 2022 Standards, projects located outside the EU shall comply with national legislation, but only core principles laid down by the EU legislation and policies that “the EIB considers relevant”.<sup>229</sup> Hence, it is possible to deviate from EU standards when the immediate achievement of EU requirements may not be practical. The EIB has been criticized for this possibility of derogation in countries where EU law is not binding for many years, as the condition for derogations is vaguely formulated. Critics thereby argue that the environmental and social standards for these projects have been deficient, as there is a different requirement for out-of-EU projects which merely constitutes a voluntary list that can be applied when “the EIB considers relevant”. Thus, the EIB neglects to apply the same standards to all projects it finances and consequently fails to create a comprehensive framework for assessing EIB operations.<sup>230</sup>

The initial role of the EIB was to foster economic, social, and territorial cohesion within the EU, as set out in Article 309 TFEU, which only refers to activities inside the EU. Hence, these objectives are not applicable when undertaking activities beyond the EU. The External Lending Mandate guided EIB financial operations outside the EU until 2020, which provided a legal basis explicitly for EIB operations listed eligible countries for financial operations outside the EU accepted by the European Commission.<sup>231</sup> This has been replaced by the Neighborhood, Development and International Cooperation Instrument (NDICI)<sup>232</sup>

According to the NDICI, the objectives of the external action are to uphold and promote the values and principles of the EU to pursue the objectives of the EU’s external action, which are

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<sup>228</sup> 2022 Standards (nr 218). See General Requirements to projects located in the EU to each standard.

<sup>229</sup> Ibid. See General Requirements to project located in the rest of the world.

<sup>230</sup> Hachez & Wouters (nr 161) p. 68.

<sup>231</sup> Decision No 446/2014/EU of the European Parliament and of the Council of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union, OJ L 135, Article 1, Article 3(2) & Annex.

<sup>232</sup> Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighborhood, Development and International Cooperation Instrument – Global Europe (NDICI), amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009.

laid down in Article 3(5), Article 8, and Article 21 TEU.<sup>233</sup> Hence, the external activities carried out by the EU shall be guided by the principles of e.g., democracy, rule of law, human rights and to foster a sustainable economic, social, and environmental development,<sup>234</sup> and develop an area of prosperity and good neighbourliness with neighbouring countries.<sup>235</sup> In addition, the specific objectives of the NDICI include the promotion of human rights and addressing global challenges such as climate change and the protection of biodiversity and the environment.<sup>236</sup> The same values are recognized as the general principles guiding the external activities, as they shall seek to promote and respect human rights and their universality and indivisibility. Hence, the NDICI recognizes that activities shall be applied with a human rights-based approach encompassing all human rights.<sup>237</sup>

Within the NDICI framework, the European Fund for Sustainable Development Plus (EFSD+) constitutes the umbrella framework for guaranteeing operations in EU external action.<sup>238</sup> It constitutes the integrated financial package supplying grants, budgetary guarantees, and blending operations to foster sustainable economic, environmental, and social development. It shall support the transition into a sustainable value-added economy, and a stable investment environment. Hence, the EFSD+ shall contribute to e.g., climate change adaptation and mitigation, environmental protection and management, and sustainable and inclusive growth.<sup>239</sup> The European Commission contains a central management role in ensuring the management of the EFSD+ framework,<sup>240</sup> and shall be advised by a strategic board on the orientation of investments under the EFSD+. The strategic board shall include, inter alia, the EIB and the European Parliament shall have observer status.<sup>241</sup> In addition, a separate paragraph clarifies the role of the EIB and stipulates the dedicated investment window for the EIB, which is set at €26.7 billion.<sup>242</sup>

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<sup>233</sup> Ibid, Article 3(1)(a).

<sup>234</sup> TEU, Article 3(5) & 21.

<sup>235</sup> Ibid, Article 3(1)(c).

<sup>236</sup> NDICI, Article 3(2)(b) & 3(2)(c)(i). Other specific objectives of the NDICI are to support and foster dialogue and cooperation with third countries, promotion of peace and stability, commitment to the values of democracy and the rule of law.

<sup>237</sup> Ibid, Article 8(1-2).

<sup>238</sup> European Parliament, *The New EFSD+ and the EIB's External Lending Mandate*, a study requested by the BUDG Committee, February 2022. Available at: [www.europarl.europa.eu/RegData/etudes/STUD/2022/729264/IPOL\\_STU\(2022\)729264\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2022/729264/IPOL_STU(2022)729264_EN.pdf) (accessed: 30 April 2022) p. 67.

<sup>239</sup> NDICI, Article 31(1-2).

<sup>240</sup> Ibid, Article 32(3).

<sup>241</sup> Ibid, Article 33.

<sup>242</sup> Ibid, Article 36(3).

There are clear references to human rights in the framework guiding the external activities performed by the EU, including the EIB. The NDICI explicitly emphasizes that activities shall uphold respect for human rights and promote sustainable economic, social, and environmental development. The NDICI framework is relatively new and replaced the earlier External Mandate of the EIB. However, the earlier framework had the same approach and recognized that operations shall respect human rights and foster sustainable economic, social, and environmental development, in line with Article 21 TEU.<sup>243</sup> Hence, the connection to human rights has been present for a long time and there is no doubt that the EIB shall take human rights and environmental considerations into account, but also actively uphold and promote these values through its financial activities. Thus, the critique related to the double standards applied by the EIB seems justified. The issue of double standards for activities outside the EU is persistent as it occurs in other internal environmental frameworks of the EIB. Hence, this matter will be examined in chapter 4.2.5.3 which focuses on the CBR. Its implications on the right to a healthy environment will be further discussed in chapter 5.

### 4.2.3 The Climate Strategy

The Climate Strategy was adopted by the EIB in 2015 and was mainly implemented during the period 2016-2020.<sup>244</sup> The Climate Strategy remains the cornerstone of the EIB approach to climate action, according to the EIB. The Climate Strategy commits the EIB to develop internal action plans or roadmaps to translate the overarching objectives of the Climate Strategy in more detail.<sup>245</sup> Critique was directed at the Climate Strategy by the time of its adoption in 2015 for not effectively supporting the EU transition to low carbon and resource-efficient economy or the climate change resilience goals of the Paris Agreement. Critics argued that the Climate Strategy failed to prioritize energy efficiency and that the EIB should progressively increase its climate action target to keep global warming below 1.5°C.<sup>246</sup>

The Climate Strategy shall guide medium to long-term actions of the EIB and further integrate climate action.<sup>247</sup> Three areas have been identified that should be consolidated and strengthened

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<sup>243</sup> NDICI, Article 1 & Article 3(2).

<sup>244</sup> EIB, '*EIB Climate Strategy*' 15 November 2020. Available at: [www.eib.org/en/publications/eib-climate-strategy](http://www.eib.org/en/publications/eib-climate-strategy) (accessed: 31 March 2022) p. 11.

<sup>245</sup> CBR (nr 25) para. 5.28.

<sup>246</sup> '*NGO Letter to EIB Board on Climate Strategy*' (sent by CEE Bankwatch Network, Counter Balance, Urgewald and WWF European Policy Office), 8 September 2015. Available at: [www.counter-balance.org/uploads/files/Documents/Briefings-and-Policy-Files/2015-NGO-letter-to-EIB-Board-on-Climate-Strategy.pdf](http://www.counter-balance.org/uploads/files/Documents/Briefings-and-Policy-Files/2015-NGO-letter-to-EIB-Board-on-Climate-Strategy.pdf) (accessed: 28 April 2022).

<sup>247</sup> Climate Strategy (nr 244) p. 2.

to achieve this overreaching goal. The first area aims to reinforce the impacts of climate financing. This implies that the financing volumes dedicated to climate action and sustainability shall be increased, but it also requires the EIB to select projects with the highest positive impact. These impacts can be divided into three dimensions. Firstly, projects that bring significant mitigation gains. Secondly, climate finance shall be mobilized from a range of different sources. Lastly, reduce barriers, both financial and non-financial, to achieve the transition to a low-carbon and climate-resilient economy.<sup>248</sup> The second area aims to build resilience to climate change. Adaptive action is necessary due to the changing climate and the consequences it comes with. A best practice in risk assessment shall be applied to enhance the resilience of investments. Therefore, there is a social dimension to identify and consider inequalities and to help protect vulnerable groups.<sup>249</sup> The third area shall further integrate climate change considerations across all EIB standards, methods, and processes. Hence, shall climate considerations be central to all activities within the EIB.<sup>250</sup>

The Climate Strategy was later used as a foundation for the creation of the CBR, adopted in 2020. The Climate Strategy was updated to correspond with the purpose of the CBR and to incorporate new climate action and sustainability targets for 2030 and 2050.<sup>251</sup> Consequently, the Climate Strategy and the CBR have a big resemblance. For this reason, the section on the Climate Strategy is deliberately brief as chapter 4.2.5 will go over these principles and standards in more detail.

#### **4.2.4 The European Green Deal**

The EU has been pushing the EU institutions and the Member States to further include environmental concerns in their operational policies and practices. The European Commission presented the Green Deal in 2019 which constitutes an extensive environmental framework applicable to all EU institutions and the Member States. The Green Deal is the EU strategy for tackling climate change and environmental-related challenges, intending to transform the EU economy to become sustainable and resource-efficient. The Commission emphasizes that nearly every aspect of the EU economy must be transformed, which includes food, consumption, transport, and construction. This transformation is necessary to achieve one of the main objectives of the Green Deal, which is “[...] to protect the health and well-being of

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<sup>248</sup> Ibid, p. 13.

<sup>249</sup> Ibid, p. 17.

<sup>250</sup> Ibid, p. 19.

<sup>251</sup> CBR (nr 25) para. 5.27.



citizens from environment-related risks and impacts”.<sup>252</sup> Even though the Green Deal does not explicitly refer to the right to a healthy environment, the phrasing of the main objective has noticeable similarities.

The Green Deal constitutes a framework aimed at increasing the EU’s climate ambition for 2030 and 2050. The first main target is to increase GHG emission reduction targets for 2030 to at least 50%, but hopefully 55%, compared with 1990 levels. The second main target is to achieve climate neutrality by 2050.<sup>253</sup> This vision has been set into legislation in the first “European Climate Law”, which applies to all EU institutions and the Member States.<sup>254</sup> To achieve the main targets, the Green Deal sets out sub-targets addressing several aspects of the economy. An example is the adoption of clean and affordable energy. The production and use of energy currently average 75% of the EU’s GHG emissions, an issue that must be addressed to achieve the main targets of the Green Deal. Hence, EU institutions and the Member States must take action to phase out the use of coal and decarbonizing gas, which shall be complemented by renewable resources.<sup>255</sup> Additional targets are the mobilization of the industry to foster a clean and circular economy, especially in energy-intensive industries such as steel, chemicals, and cement<sup>256</sup>, and to transform the construction and renovation of buildings in an energy and resource-efficient way.<sup>257</sup>

The EU has committed itself to achieving ambitious climate targets with the adoption of the Green Deal and an action plan has been prepared to meet these targets. The EU must collectively move its economy towards a more sustainable path. This transformation requires “massive public investments” directed at climate and environmental action, as international efforts must be made to create a financial system that encourages sustainable solutions.<sup>258</sup> The main measure is “climate-relevant spending”, meaning that spending shall contribute to the green transition.<sup>259</sup>

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<sup>252</sup> European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - The European Green Deal*, Green Deal, 11 December 2019, COM(2019) 640 final, p. 2.

<sup>253</sup> European Green Deal (nr 252) p. 2.

<sup>254</sup> European Parliament, *Regulation (EU) 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations (EC) no 401/2009 and (EU) 2018/1999 ('European Climate Law')*, 30 June 2021, OJ L 243; European Commission, *The European Green Deal*, 11 December 2019, COM(2019) 640 final, p. 4.

<sup>255</sup> Green Deal (nr 252) p. 6.

<sup>256</sup> *Ibid.*, p. 7-9.

<sup>257</sup> *Ibid.*, p. 9.

<sup>258</sup> *Ibid.*, p. 2.

<sup>259</sup> Fleming R.C & Mauger R, ‘Green and Just? An Update on the European Green Deal’ (2021) *Journal for European Environmental & Planning Law*, Brill Nijhoff, Vol. 18, Issue 1, p. 167.

Hence, the EIB has a vital function in the transition of the financial system to achieve the targets of the Green Deal, as the lending arm of the EU. The Commission has recognized that major investments will be needed to achieve the goals set out in the Green Deal, where the EIB will provide important support. To achieve the climate and energy targets set out for 2030, an estimated €260 billion of annual investments will be needed. In addition, at least 25% of the EU's long-term budget shall be devoted to climate action.<sup>260</sup> The financial measures are clarified in the Green Deal Investment Plan, also called the Sustainable Europe Investment Plan.<sup>261</sup>

But how *green* is the Green Deal? There are indications that the total emission reduction goal set out for 2030 will not be reached with the proposed measures, as there is a gap between the climate goals of the Green Deal and the implementation plans.<sup>262</sup> This is problematic if the EU itself fails to implement a plan to achieve the promised reduction of emissions. The Green Deal relies on the financial pillar to achieve the goals of the Green Deal through sustainable finance, or “climate-relevant spending”. Hence, the Green Deal has a clear focus on economic growth through the transition to “green” economies to support green growth. This approach should be discussed further, as the Green Deal neglects to challenge the causes of climate change and to further engage with the complex issues of economic growth, consumption, and resource distribution as components contributing to climate change. These matters risk to be overlooked by the promise of a green transition of the economy.<sup>263</sup> Indications show that the achievement of green growth demands an absolute, permanent, global, and fast decoupling of economic growth from all crucial environmental pressures such as energy, GHG, water pollutants, and biodiversity loss. Hence, measures merely aiming at “greening” the economy is not enough to effectively mitigate climate change. A direct downscaling of economic production and consumption is needed to tackle climate change as an additional measure of green growth.<sup>264</sup>

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<sup>260</sup> European Green Deal (nr 252) p. 16; European Commission, ‘European Green Deal sets out how to make Europe the first climate-neutral continent by 2050, boosting the economy, improving people’s health and quality of life, caring for nature, and leaving no one behind’, Press release, 11 December 2019. Available at: [www.ec.europa.eu/commission/presscorner/detail/en/ip\\_19\\_6691](http://www.ec.europa.eu/commission/presscorner/detail/en/ip_19_6691) (accessed 4 April 2022).

<sup>261</sup> European Commission, ‘The European Green Deal Investment Plan and Just Transition Mechanism explained’ [website]. Available at: [www.ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_24](http://www.ec.europa.eu/commission/presscorner/detail/en/qanda_20_24) (accessed: 4 April 2022).

<sup>262</sup> Fleming & Mauger (nr 259) p. 169.

<sup>263</sup> Counter Balance, ‘*The European Green Deal: Reclaiming Public Investments for a real Socio-ecological Transformation*’ 20 October 2021. Available at: [www.counter-balance.org/uploads/files/Reports/Flagship-Reports-Files/2021-EGD-Report-Counter-Balance-Online.pdf](http://www.counter-balance.org/uploads/files/Reports/Flagship-Reports-Files/2021-EGD-Report-Counter-Balance-Online.pdf) (accessed: 29 April 2022), p. 23.

<sup>264</sup> European Environmental Bureau, ‘*Decoupling Debunked: Evidence and arguments against green growth as a sole strategy for sustainability*’ July 2019. Available at: [www.eeb.org/wp-content/uploads/2019/07/Decoupling-Debunked.pdf](http://www.eeb.org/wp-content/uploads/2019/07/Decoupling-Debunked.pdf) (accessed: 29 April 2022) p. 4-5.

However, measures directed at downscaling production are absent from the Green Deal, as the current measures deliver a promise of a climate-neutral continent by 2050 through the green transition of the economy. There is reason to be a bit sceptical that the goal set out for 2050 will be achieved if the proposed measures to reach the emissions reduction goal set out for 2030 are proven to be insufficient.

#### **4.2.5 EIB Group Climate Bank Roadmap 2021-2025**

The Board of Directors of the EIB approved an additional environmental framework in 2019, aligned with the ambitions set out in the Green Deal. These increased levels of climate and environmental commitments were presented in the CBR. The CBR was adopted in 2020 when the EIB announced its self-declared metamorphosis into the “EU climate bank”, claiming to be the first international climate bank.<sup>265</sup> The CBR sets out the EIBs commitment to the Green Deal and clarifies its vision on sustainable financing within and outside the EU.<sup>266</sup> In addition, the CBR is a further development of the EIB’s internal framework, the Climate Strategy, but has been remodelled to reflect the latest scientific knowledge and to further incorporate new measures on climate action and environmental sustainability.<sup>267</sup>

The EIB clearly emphasizes that the CBR aims to support the Green Deal, but also the Paris Agreement to limit global warming to 1.5 °C. The Paris Agreement is central as the CBR is built on the common approach that has been developed by several MDBs, among them the EIB, which is called the MDB Paris alignment framework.<sup>268</sup> This constitutes a framework to affiliate the activities of MDBs to the objectives set out in the Paris Agreement. The MDB common approach covers six blocks of core areas for alignment with the objectives of the Paris Agreement. These are: alignment with mitigation goals; adaption and climate-resilient operations; accelerated contribution to the transition through climate finance; engagement and policy development support; reporting; and align internal activities.<sup>269</sup> As presented below, these blocks correspond to the CBR framework.

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<sup>265</sup> CBR (nr 25) para. 1.1.

<sup>266</sup> EIB, ‘2020 Sustainability Report’ 27 May 2021. Available at: [www.eib.org/en/publications/sustainability-report-2020](http://www.eib.org/en/publications/sustainability-report-2020) (accessed: 28 February 2022), p. 12.

<sup>267</sup> CBR (nr 25) para. 1.8.

<sup>268</sup> ‘The MDBs’ alignment approach to the objectives of the Paris Agreement: working together to catalyse low-emissions and climate-resilient development’, a joint approach by the ADB, AfDB, EIB, EBRD, Inter-American Development Bank, Islamic Development Bank, New Development Bank, and the World Bank Group in 2019. Available at: [www.thedocs.worldbank.org/en/doc/784141543806348331-0020022018/original/JointDeclarationMDBsAlignmentApproachtoParisAgreementCOP24Final.pdf](http://www.thedocs.worldbank.org/en/doc/784141543806348331-0020022018/original/JointDeclarationMDBsAlignmentApproachtoParisAgreementCOP24Final.pdf) (accessed: 29 April 2022).

<sup>269</sup> ‘The MDBs’ alignment approach to the objectives of the Paris Agreement’ (nr 268) p. 1-2; CBR (nr 25) para. 1.31.

The ambition of the CBR is to advance the levels of climate finance to endorse climate neutrality by 2050 according to the Green Deal and to meet the temperature and climate-resilience goals of the Paris Agreement.<sup>270</sup> To achieve these objectives, two broad elements of environmental sustainability have been set in the CBR. Firstly, to support €1 trillion of investment in climate action and environmental sustainability between 2021 to 2030. This implies that the EIB will increase its level of climate action and environmental sustainability by 2025 to exceed 50% of its overall lending operations.<sup>271</sup> Secondly, all lending activity, e.g., lending, guarantees, securitization, and equity, shall align with the goals of the Paris Agreement. This is necessary as the EIB cannot achieve the goals of the Paris Agreement when merely 50% of its finances are green if the remaining 50% of its finances undermine the goals. Hence, the EIB must guarantee that all its activities do no significant harm to the goals set out in the Paris Agreement, in line with the principle of sustainable finance.<sup>272</sup>

#### **4.2.5.1 First Workstream: Transition to Green Finance**

The CBR divides its climate and environmental commitment into four main workstreams. The first workstream is to accelerate the transition through green finance. This workstream includes increased investments related to climate, environment, and sustainable projects. It also involves the support of long-term innovation and new business models.<sup>273</sup> Twelve focus areas for green investments have been identified, of which ten directly correspond to the Green Deal.<sup>274</sup> Examples of these areas are to build greater resilience to climate change,<sup>275</sup> promoting clean energy,<sup>276</sup> eliminating pollution,<sup>277</sup> and sustainable cities and regions.<sup>278</sup> The EIB shall promote green financing within these focus areas by engagement with key stakeholders, structured origination activity, development of green loans, and further developing of the EIBs existing suite of financial products.<sup>279</sup>

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<sup>270</sup> CBR (nr 25) para. 2.

<sup>271</sup> Ibid, para. 6.

<sup>272</sup> Ibid, para. 7.

<sup>273</sup> Ibid, para. 8.

<sup>274</sup> Ibid, para. 2.6.

<sup>275</sup> Ibid, paras. 2.8-2.17.

<sup>276</sup> Ibid, paras. 2.22-2.25.

<sup>277</sup> Ibid, paras. 2.32-2.34.

<sup>278</sup> Ibid, paras. 2.44-2.46.

<sup>279</sup> Ibid, para. 2.65.

Despite its claim to accelerate the transition through green finance, the EIB has been criticized for its continued support of high carbon projects. Even though the CBR offers some positive developments, such as the exclusion of financing from certain projects mainly in the energy sector, are funds for infrastructure projects within the transport sector still available.<sup>280</sup> Demands have thereby been raised for the EIB to exclude high-carbon and environmentally harmful operations from the EIB portfolio to achieve the goals set out in the Green Deal and the Paris Agreement.<sup>281</sup>

#### **4.2.5.2 Second Workstream: Just Transition for All**

The second workstream aims to ensure a just transition for all. This workstream aspires to ensure that the transition to a net-zero GHG emissions economy is just for everyone, leaving no one behind.<sup>282</sup> This workstream touches on the wider issue of social development and climate change, as it has been acknowledged that the transition to a climate-neutral economy will have economic and social justice impacts. This workstream implies that support must be given to communities affected by climate change and the structural change it comes with. The transition will especially concern carbon-intensive industries (e.g., cement plants or smelters) or regions dependent on fossil fuels extraction and treatment (e.g., refineries). Hence, support must be given as the transition to a climate-neutral economy will affect local employment and income in affected regions.<sup>283</sup>

According to the EIB, a just transition to all shall also involve measures to reduce vulnerability, as climate change continues to impact people all around the world and their livelihood, health, and food security. Well-targeted investments are needed to contribute to social development and a just and green transition.<sup>284</sup> However, the meaning of well-targeted investments to reduce vulnerability on a global scale is vague. There is a clear focus on particular sections of society, such as workers and jobless citizens within certain affected regions in the Member States. There are several issues related to the transition to climate neutrality around the world, of which less-

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<sup>280</sup> CEE Bankwatch Network, '*CEE Bankwatch Network submission to the EIB Climate Roadmap 2021-2025*', 9 July 2020. Available at: [www.bankwatch.org/wp-content/uploads/2020/07/Bankwatch-2nd-Submission-to-EIB-Climate-Roadmap-2021-2025.pdf](http://www.bankwatch.org/wp-content/uploads/2020/07/Bankwatch-2nd-Submission-to-EIB-Climate-Roadmap-2021-2025.pdf) (accessed: 1 May 2022).

<sup>281</sup> '*Joint Civil Society Letter: Making the "EU Climate Bank" a Reality*', 28 January 2021. Available at: [www.bankwatch.org/wp-content/uploads/2021/01/CSO-statement\\_Climate\\_Jan2021.pdf](http://www.bankwatch.org/wp-content/uploads/2021/01/CSO-statement_Climate_Jan2021.pdf) (accessed: 1 May 2022).

<sup>282</sup> CBR (nr 25) para. 3.1-3.3.

<sup>283</sup> Fleming & Mauger (nr 259) p. 170.

<sup>284</sup> CBR (nr 25) para. 3.17.

developed regions will be most affected. These concerns are only shortly recognized in the CBR but without clear measures to tackle the issue. The just transition mechanism from the Green Deal has been criticized for creating a restricted vision of the meaning of a just transition, instead of focusing on solidarity, fairness, and justice for *all* people and citizens living in different affected regions. Hence, there is a need for a wider understanding of the meaning of a just transition and alternative measures on how to guarantee a just transition.<sup>285</sup>

#### **4.2.5.3 Third Workstream: All Activities Shall Align with the Paris Agreement**

According to the third workstream, all activities shall support Paris-aligned operations. The EIB emphasizes that this includes two dimensions: low GHG emissions and climate resilience. The first dimension implies that activities created today must be consistent with the objective of a climate-neutral economy, hence, new investments shall not undermine attempts to accomplish the 1.5 °C goal. The second dimension implies that assets and products created today must be made with the calculated risk that climate change might affect their operating life.<sup>286</sup> This workstream constitutes the most comprehensive alignment framework as this commitment covers all financing activities by the EIB Group.<sup>287</sup> This commitment applies to all projects seeking approval from 1 January 2021.<sup>288</sup> When deciding to support an investment today, the EIB must determine whether the project fulfils these requirements, including a risk assessment to evaluate whether an investment today poses a risk to continue to produce emissions over decades ahead.<sup>289</sup>

The EIB has been criticized in a joint letter by 47 civil society organisations as the EIB neglects to fully align its operations with the Paris Agreement as the CBR accepts non-Paris-aligned projects outside of the EU.<sup>290</sup> According to the EIB, the main approach is that the CBR principles shall apply to all operations. However, it is “clearly necessary to interpret this principle within a non-EU context” when principles of the CBR are defined with reference to EU legislation. Thus, there is a possibility of derogation. The EIB declares that the interpretation will be regionally dependent or according to local best practices rather than

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<sup>285</sup> Fleming & Mauger (nr 259) p. 175.

<sup>286</sup> CBR (nr 25) para. 4.69.

<sup>287</sup> Ibid, paras. 4.1-4.3.

<sup>288</sup> Ibid, para. 4.6.

<sup>289</sup> Ibid, paras. 4.9-12.

<sup>290</sup> *Joint Civil Society Letter: Making the “EU Climate Bank” a Reality* (nr 281).

international standards, without precisising how this assessment shall be made.<sup>291</sup> This will affect several sectors and areas, as EU regulations and standards are used to define many aspects of the CBR. In these cases, the local needs shall be interpreted in the local context.<sup>292</sup> The CRB provides examples of areas where local interpretation is needed, such as the road sector, vehicles, buildings, and the meat industry.<sup>293</sup> The application of double standards to activities undertaken outside the EU has been criticized for a long time, as highlighted in chapter 4.2.2 on the 2009 Statement and 2022 Standards.<sup>294</sup> This issue, and its implications on the right to a healthy environment, will be further discussed in chapter 5.

#### **4.2.5.4 Forth Workstream: Strategic Coherence, Transparency, and Accountability**

In the fourth, and last, workstream the EIB commits itself to ensuring to build strategic coherence and accountability. This implies that the EIB group shall have a coherent policy approach to support sustainable finance to promote coherence and accountability. The EIB must ensure to fully integrate environmental, climate, and social considerations in its activities that are aligned with international law, EU legislation, and its frameworks.<sup>295</sup> There are three aspects of special importance. Firstly, to ensure that its policies related to environment and climate are appropriate in a wider context of sustainable finance. The internal frameworks shall be further developed to ensure their alignment with international law and EU legislation.<sup>296</sup> Secondly, to ensure transparency, accountability, and quality assurance. The EIB shall work with the EU and other MDBs to create a coherent approach to ensure that measures on transparency and accountability are in place and adequate. The EIB shall provide the necessary data to track progress, development, impacts, and reporting systems.<sup>297</sup> The EIB shall establish a monitoring and reporting system related to the implementation of the CBR and assess its overall impact.<sup>298</sup> Lastly, the EIB shall provide institutional support. It implies that institutional elements shall be designed to ensure that the activities of the EIB are aligned with the Paris Agreement.<sup>299</sup> This

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<sup>291</sup> CBR (nr 25) para. 4.54.

<sup>292</sup> Ibid, para. 4.57.

<sup>293</sup> Ibid, paras. 4.58-4.50

<sup>294</sup> Hachez & Wouters (nr 161) p. 68.

<sup>295</sup> CBR (nr 25) paras. 5.1-5.2.

<sup>296</sup> Ibid, paras. 5.3-5.25.

<sup>297</sup> Ibid, paras. 5.32-5.33.

<sup>298</sup> Ibid, paras. 5.32-5.36.

<sup>299</sup> Ibid, paras. 5.32-5.40.

shall be done through awareness tools designed to make EIB staff aware of carbon emissions,<sup>300</sup> engagement of EU institutions, the public and private sector, civil society, and universities.<sup>301</sup>

Transparency is a vital component for environmental protection within an institution like the EIB to verify that the projects supported are consistent with environmental laws and EIBs internal frameworks, and to provide details of environmental impacts. The lack of transparency is one of the main focuses of the critique that has been directed toward the EIB and its different environmental and social frameworks, both from civil society groups and the EU.<sup>302</sup> According to the 2020 Aid Transparency Index, published by Publish What You Can, a global campaign on transparency of aid and development information, the EIB received 58.9 out of 100 points. This can be compared with the 97.1 points the World Bank scored.<sup>303</sup>

The European Parliament has criticized the EIB for the lack of transparency on several occasions and reminded the EIB of its legal obligation under the Aarhus Convention. The European Parliament calls on the EIB to review its transparency policy, to ensure its compliance with its social, climate, and environmental commitments.<sup>304</sup> The issue of transparency is more apparent when it comes to projects financed through financial intermediaries which constituted a third of the EIB's investments in 2020, an issue that was raised in chapter 4.2.2. The European Parliament raised special concerns regarding the transparency issues related to financial intermediaries, and that the EIB shall cease working with such intermediaries with a history of inadequate transparency and violation of human rights.<sup>305</sup>

The EIB has repeatedly avoided environmental scrutiny, as was recognized in the case *ClientEarth v. European Investment Bank*,<sup>306</sup> and has recently been the subject of review by the EU Ombudsman. The EU Ombudsman published three decisions on 25 April 2022 concerning the EIB practice of disclosing information related to environmental aspects of its projects. The first case concerned the EIBs practice of disclosing information related to environmental

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<sup>300</sup> Ibid, para. 5.44.

<sup>301</sup> Ibid, para. 5.47.

<sup>302</sup> CEE Bankwatch, 'The EIB cannot become a 'climate leader' while failing on transparency', 10 November 2021 [website]. Available at: [www.bankwatch.org/press\\_release/the-eib-cannot-become-a-climate-leader-while-failing-on-transparency](http://www.bankwatch.org/press_release/the-eib-cannot-become-a-climate-leader-while-failing-on-transparency) (accessed: 28 April 2022); Counter Balance (nr 263) p. 46.

<sup>303</sup> Publish What You Fund, 'Aid Transparency Index 2020'. Available at: [www.publishwhatyoufund.org/the-index/2020/](http://www.publishwhatyoufund.org/the-index/2020/) (accessed: 2 May 2022) p. 6.

<sup>304</sup> European Parliament, *Report on control of the financial activities of the European Investment Bank*, 10 March 2020, 2019/2126(INI), paras. 73, 77 & 78.

<sup>305</sup> Ibid, para. 79; European Parliament (nr 224) para. 41.

<sup>306</sup> See chapter 3.4.2.



aspects of projects that it financed directly and found that environmental information was published too little and too late. The Ombudsman sent a preliminary assessment with suggested improvements. The Ombudsman suggested for the EIB to provide a timeline for projects online,<sup>307</sup> publication of detailed information on the “project cycle”<sup>308</sup> and to publish a timely publication of minutes of the Board of Directors meetings.<sup>309</sup> The EIB has agreed to implement some changes but disagreed with others.<sup>310</sup> The second case suggested improvements to increase access to information about projects by financial intermediaries. It includes suggestions to perform additional training to financial intermediaries,<sup>311</sup> to provide clarity regarding what projects are considered as having a “significant impact on the environment”<sup>312</sup> and to include a section on intermediary-financed projects in the EIB transparency report.<sup>313</sup>

The last case is connected to the case *ClientEarth v. European Investment Bank*. It concerns public access to minutes from meetings of the EIB Management Committee when financing of the Curtis project was discussed. The Ombudsman found that the EIB failed to provide valid reasons for refusing disclosure of the documents and emphasizes that it remains a legal expectation that the reasons for non-disclosure shall be as specific as possible about the content of the document and other relevant facts. Hence, the EIB should have explained why disclosing the document would undermine its internal decision-making process.<sup>314</sup>

As presented in this section, the lack of transparency within the EIB has been emphasized by several actors. The lack of access to information affects the possibilities to assess human rights and environmental impacts of the EIB project, and the prospects to evaluate whether the EIB is to be regarded as a “climate bank”. This issue will be further discussed in chapter 5.2.2 and its implication for the promotion and protection of the right to a healthy environment.

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<sup>307</sup> European Ombudsman, Decision on how the European Investment Bank discloses environmental information in relation to projects that it finances directly, case 1065/2020/PB, 21 April 2022, paras. 29-32.

<sup>308</sup> Ibid, paras. 40-44.

<sup>309</sup> Ibid, paras. 49-54.

<sup>310</sup> Ibid, para. 9.

<sup>311</sup> European Ombudsman, Decision on how the European Investment Bank discloses environmental information about projects it finances through intermediaries, case 1251/2020/PB, 21 April 2022, paras. 20-22.

<sup>312</sup> Ibid, paras. 23-24.

<sup>313</sup> Ibid, paras. 25-26.

<sup>314</sup> European Ombudsman, Decision on how the European Investment Bank to grant public access to the minutes of Management Committee meetings, case 1252/2020/PB, 21 April 2022, paras. 9, 12 & 13.

### 4.3 Legal Standing of Environmental Frameworks

Since the end of the 20<sup>th</sup> century, and especially the beginning of the 21<sup>st</sup> century, the EIB has developed its internal frameworks to address how human rights and environmental considerations affect its lending operations. A lot has happened, and the EIB now claims to commit itself to incorporate different measures to further protect the environment, but what is the legal standing of these documents and commitments?

The CJEU established that the EIB is bound by the Aarhus Convention due to its position as an EU institution, in the case of *ClientEarth v. European Investment Bank*. ClientEarth requested an internal review of a resolution adopted by the EIB. The EIB argued that its resolution ought to be exempt from scrutiny provided for by EU law. This vital judgment clarifies the position of the EIB under EU law and ruled that financial decisions may be subject to a request for internal review according to the Aarhus Regulation when a lawful request is made. The case clarifies that the EIB must take comply with the Aarhus Convention and ensure environmental participatory rights. Thus, principles of transparency in environmental issues cannot merely be used to guide project appraisal before financing decisions. The ruling marks an important step to further clarify what kind of environmental and human rights consideration the EIB is legally bound by, even though many aspects of the human rights obligations of the EIB remain unclear.

This case is interesting for other reasons as well, as it features the EIB's perception of its social and environmental frameworks. The Court referred to the 2009 Statement to clarify the legal framework in which the resolution was adopted.<sup>315</sup> The Court emphasizes that the 2009 Statement requires that social and environmental considerations shall be respected for all funding by the EIB and that a project shall contribute to the objectives of EU policy and as an appropriate response to climate change. In addition, the 2009 Statement requires that a project shall comply with the general environmental standards established by the EIB, which derive from EU law.<sup>316</sup> The EIB disputed the arguments that the 2009 Statement was a part of the legal framework of which the resolution was adopted. According to the EIB, the 2009 Statement "was intended only to guide projects appraisal prior to financing decisions. It is an internal act that does not alter the Bank's mission as defined in the TFEU, which does not mention the

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<sup>315</sup> *ClientEarth v European Investment Bank* (nr 179) para. 28.

<sup>316</sup> *Ibid*, paras. 34-35.

promotion of environmental protection among the EIBs key functions”.<sup>317</sup> From this line of reasoning, the EIB would merely be legally bound by the provisions establishing the EIB’s mission in Article 308 and 309 TFEU, but not by Article 11 or 191 TFEU, or Article 37 of the Charter on environmental protection. Additionally, the EIB would not be bound by its internal frameworks, even though most of the environmental standards derive from EU law. This argumentation shows that the EIB still perceives itself to be more separated from the EU than it is, as discussed in chapter 3.3.2 on the legal personality of the EIB. One can thereby question what kind of relevance the internal frameworks bring when the EIB itself does not appear to have good-faith intention to let these environmental frameworks lead its financial decisions.

Consequently, there is a need to further clarify what parts of EU law apply to the EIB, and it is especially important to identify the human rights obligations of the EIB. The CJEU and the Ombudsman have elucidated the human rights obligations related to environmental participatory rights. However, as will be seen in chapter 5, there are still several aspects of the obligations related to the right to a healthy environment that demands further clarification, especially related to the substantive obligations. The clarification of the legal obligations of the EIB is essential to increase the relevance of its internal environmental frameworks. If not, these seemingly extensive social and environmental frameworks will not provide a clear standpoint of what the EIB has committed to implement. Without a legal obligation to fulfil these principles, standards, and operational policies, these frameworks merely set out relevant components which the EIB shall *consider* before making financing decisions. Thus, the internal frameworks will lose their relevance as the EIB continues to elude its international responsibilities.

## 4.4 Concluding Remarks

This chapter has examined how the EIB has incorporated environmental concerns within its lending operations in line with the concept of sustainable finance. This chapter contains an overview of different environmental frameworks adopted by the EIB, focusing on the Social and Environmental Standards, the Climate Strategy, and CBR to emphasize how the EIB claims to have increased a human rights-based approach to its lending activities. Nevertheless, these frameworks have been criticized by civil society, academics, and various EU bodies such as the European Parliament, the EU Ombudsman, and the CJEU. The identified issues are mainly

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<sup>317</sup> Ibid, para. 115.

related to the support given to carbon-heavy industries despite its commitments to lead the transition to green finance; the failure to assure a just transition for all vulnerable groups and regions affected by the green transition; the possibility to accept non-Paris aligned projects outside the EU; and the lack of transparency related to environmental projects. These shortcomings have been examined to emphasize how these environmental frameworks neglect to properly guarantee environmental protection as stipulated in the CBR. With this understanding, the next chapter will further examine and analyse to what extent the environmental policies adopted by the EIB, with a special focus on the CBR, is consistent with the right to a healthy environment, going back the full circle to the main research question of this thesis.

# 5 The “EU Climate Bank”?

## 5.1 Introduction

Human-induced climate change is causing widespread disruption in nature, affecting lives all over the world. Major adjustments are required to effectively mitigate climate change and to tackle this grave threat to the well-being of humans and a healthy planet, adjustments that require extensive financial support.<sup>318</sup> The EIB is of special relevance as it is the largest multilateral financial lender in the world in terms of the volume of its loans, and because of its ability to impact investments within and outside the EU. As emphasized in the previous chapter, the EIB has advanced its environmental commitment and climate action. The general development of the EIB is thereby positive, as it now claims to have climate considerations as one of its main concerns, setting itself at the forefront of the global fight against climate change as the “EU climate bank”. Nevertheless, there is reason to be sceptical of whether the EIB shall be regarded as a climate bank, as there are several shortcomings of the EIB internal framework.<sup>319</sup>

These issues are problematic for the so-called first international climate bank. As will be argued in this chapter, a climate bank, albeit self-appointed must fully align its environmental commitment with the right to a healthy environment, as its financial activities will affect climate change and thereby human rights. Thus, it is necessary to further examine to what extent the commitments adopted by the EIB aligns with the right to a healthy environment, and to further discuss whether the EIB can be classified as a climate bank. The aim of this chapter is therefore to answer the main research question: to what extent are the environmental policies adopted by the EIB consistent with the right to a healthy environment?

## 5.2 Climate Action and the Right to a Healthy Environment

### 5.2.1 A Green Transition and Paris-Aligned Projects

The EU and its institutions have adopted measures as a response to climate change. The entire EU economy shall be transformed to become sustainable and resource-efficient to achieve the

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<sup>318</sup> IPCC (nr 1) paras. C.1 & C.3.2.

<sup>319</sup> See chapter 4.

goals set out in the Paris Agreement and the Green Deal.<sup>320</sup> The EIB clearly emphasizes that the CBR aims to align its climate considerations with the ambitions set out in the Green Deal, foremost to limit global warming to 1.5°C.<sup>321</sup> These climate commitments are established in the first workstream, which is the transition to green finance, and the third workstream, which is to align all of its activities with the Paris Agreement.<sup>322</sup>

The interconnection between climate change and the right to a healthy environment is recognized in the Green Deal which stipulates that the transformation to a sustainable economy is necessary to achieve one of the main objectives, which is “[...] to protect the health and well-being of citizens from environment-related risks and impacts”.<sup>323</sup> The EIB does not explicitly refer to the right to a healthy environment in the CBR, even though it can be assumed from the Green Deal. Yet, a green transition of the economy is necessary to achieve the higher goal of limiting global warming to 1.5°C, which is vital for the enjoyment of the right to a healthy environment, as global warming evidently causes negative effects on all human rights. Hence, the commitment of the EIB presented in the first and third workstream is vital for the protection and promotion of the right to a healthy environment.

But are the commitments in the first and third workstream consistent with the right to a healthy environment? As presented in chapter 2, the Special Rapporteur on human rights and the environment summarized the obligations under human rights law related to the right to a healthy environment in the Framework Principles, which reflect the application of already existing human rights norms concerning environmental rights.<sup>324</sup> The Framework identifies substantive rights, as the right to life and the right to health, which are likely to suffer due to environmental harm. Hence, there is an obligation to implement environmental standards to prevent environmental harm, and to ensure the enjoyment of the right to a healthy environment. This underlines the interdependence of human rights and the environment, as the right to a healthy environment must be ensured to protect and respect other human rights.<sup>325</sup> Even though the EIB is not explicitly bound by a recognized substantial right to a healthy environment, the TFEU obligates the EIB to integrate a high level of environmental protection, and the human rights

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<sup>320</sup> Green Deal (nr 252) p. 2.

<sup>321</sup> CBR (nr 25) para. 2.

<sup>322</sup> See chapter 4.2.5.1 on the first workstream and chapter 4.3.5.3 on the third workstream.

<sup>323</sup> Green Deal (nr 252) p. 2.

<sup>324</sup> A/HRC/37/59 (nr 48) para. 8.

<sup>325</sup> Ibid, Annex, Principles 1 & 2

aspect of this obligation stems from Article 37 of the Charter. As previously argued, the environmental protection of the Charter is more far-reaching due to its relationship with the ECHR, which extends the obligations of the EIB.<sup>326</sup> Altogether, these obligations require the EIB to integrate a high level of environmental protection into all policies in a systematic manner.<sup>327</sup>

With these obligations in mind, one can wonder to what extent the environmental commitments in the CBR align with the right to a healthy environment. The first workstream aims to accelerate the transition to climate-neutrality through green finance, or “climate-relevant spending”. Despite this commitment, the EIB has continued to support projects in high carbon sectors such as the car industry and supported the development of new airports. Voices have been raised to urge the EIB to exclude environmentally harmful operations from the EIB portfolio in order to achieve the goals set out in the Paris Agreement.<sup>328</sup> By continuing to finance environmentally harmful projects the EIB operates in contradiction to the CBR, especially the first workstream, but also workstream three as the EIB thereby neglects to align activities to support the goals set out in the Paris Agreement. If the EIB fails to properly fulfil its commitment established in workstreams one and three, the EIB risks violating its established human rights obligations, which are to integrate a high level of environmental protection.

#### **5.2.1.1 Lack of a Human Rights-Based Approach**

The need to integrate a high level of environmental protection is urgent, as climate change have caused more widespread impacts on human and ecological systems than previously predicted, causing harm on physical health and human mortality due to extreme weather, air pollution, and climate-related water and food-borne diseases.<sup>329</sup> If the climate goals set out in the Paris Agreement are exceeded, research has shown that human and ecological systems will suffer irreversible catastrophic consequences.<sup>330</sup> Hence, global warming must be limited to 1.5°C in accordance with the Paris Agreement, as the consequences inevitably will affect the right to a healthy environment. Thus, reaching the goals of the Paris Agreement is vital for the promotion

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<sup>326</sup> See chapter 3.4.1.

<sup>327</sup> Marín Durán & Morgera (nr 165) p. 4.

<sup>328</sup> See chapter 4.2.5.1; ‘*Joint Civil Society Letter: Making the “EU Climate Bank” a Reality*’ (nr 281); CEE Bankwatch Network (nr 280).

<sup>329</sup> IPCC (nr 1) paras. SPM B.1.7 & SPM.B.2.

<sup>330</sup> *Ibid*, para. B.6.

and protection of the right to a healthy environment as the consequences of global warming will affect all human rights.

The EIB has set out clear environmental commitments in the CBR, but this thesis finds that the EIB fails to adopt a human rights-based approach to these commitments. Respect for human rights is a fundamental value in its financial activities, according to the EIB. However, human rights are only mentioned in the CBR when describing other frameworks, namely the EU Taxonomy and the Paris Agreement, but never regarding its own commitments.<sup>331</sup> The EIB also asserts to strive for the achievement of the SDGs, but the SDGs are only mentioned in the CBR as representing a positive milestone on the path towards a more sustainable economy worldwide.<sup>332</sup> Furthermore, the EIB claims to support the Guiding Principles on Business and Human Rights but fails to acknowledge these in any of its environmental frameworks.<sup>333</sup> In addition, the CBR neglects to refer to the Charter as its applicable legal framework related to environmental matters, even though the EIB is legally bound by the Charter including Article 37 on environmental protection. The EIB exclusively uses EU environmental law as a source, without reference to the Charter or other human rights instruments.<sup>334</sup>

This thesis finds that the commitments to accelerate the transition to green finance and to align all EIB activities with the Paris Agreement must be implemented with a human rights-based approach to tackle the issues at hand. Without a human rights-based approach in its policies to combat global warming, the EIB risks to neglect important aspects of the issue, as the failure to reach these goals will carry insurmountable consequences on the right to life, the right to health, and thereby the right to a healthy environment. The EIB must perform an operative translation of the CBR to acknowledge how its financial activities affect the enjoyment of human rights. This should include a proper application of applicable legal human rights frameworks related to environmental protection, to ensure that its internal environmental framework is consistent with the right to a healthy environment.

How come the so-called “climate bank” fails to acknowledge this interdependence of human rights, when the interconnection between human rights and the environment is widely

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<sup>331</sup> CBR (nr 25) p.102 & footnote nr. 56.

<sup>332</sup> Ibid, p. 1.

<sup>333</sup> See chapter 4.2.

<sup>334</sup> See chapter 4.2.2 on the Environmental and Social Principles and Standards where the EIB also fails to acknowledge Article 37 of the Charter as applicable law.



acknowledged on a global scale? The meaning of the right to a healthy environment has become slightly clearer through the Framework Principles, but aspects remain unclear, especially on the obligations of non-State actors.<sup>335</sup> This uncertainty might enable the lack of human rights considerations taken concerning the environment within the EIB frameworks, as there remain uncertainties in relation to what kind of human rights obligations apply to such an institution, and how far-reaching those obligations might be. Hence, the unclear state of the right to a healthy environment might enable institutions to elude their responsibilities to guarantee environmental protection as acknowledged in human rights law. The uncertainties related to the right to a healthy environment underline the need for recognition of the right to a healthy environment in a legally binding document, such as the Charter. It would generate supplementary moral claims with added symbolic power to the right to a healthy environment and send an authoritative institutional message. Additionally, it would emphasize the importance of the question. Foremost, a legal recognition would provide additional precision and certainty, and importantly, enforceability.

#### **5.2.1.2 The Application of Double Standards**

Another issue repeatedly discussed is the application of double standards, as the EIB applies different environmental criteria within and beyond the EU. The EIB has committed itself to aligning *all* projects to support the Paris Agreement, meaning that projects shall fulfil the requirement of low GHG emissions and climate resilience.<sup>336</sup> Aspects of this commitment have been highly criticized, as the CBR enables derogations and accepts non-Paris-aligned projects outside the EU.<sup>337</sup> The use of double standards is not exclusive to the CRB, as it is also present in other environmental frameworks.<sup>338</sup> The NDICI regulation guides the external operations of all EU institutions, including the EIB. This framework takes a clear human rights approach, as the main objectives of the external action are to uphold and promote values and principles of the EU to pursue the objectives of the EU's external action, such as the respect for human rights and to foster a sustainable economic, social, and environmental development.<sup>339</sup> The same values are recognized as the general principles guiding the external activities, as a human rights-based approach shall be applied, accentuating the universality and indivisibility of human

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<sup>335</sup> See chapter 2.3.1; A/HRC/37/59 (nr 48) para. 18.

<sup>336</sup> See chapter 4.2.5.3.

<sup>337</sup> *Joint Civil Society Letter: Making the "EU Climate Bank" a Reality* (nr 281).

<sup>338</sup> See chapter 4.2.2.

<sup>339</sup> See chapter 4.2.2; NDICI, Article 3(1)(a).

rights.<sup>340</sup> In addition, the EFSD+ aim to foster sustainable economic, environmental, and social development, transition into a sustainable value-added economy, and a stable investment environment.<sup>341</sup>

The framework guiding the external activities performed by the EIB establishes that human rights and environmental considerations shall be promoted when undertaking financial activities beyond the EU. The practice of applying double standards is inconsistent with the NDICI and EFSD+ as the EIB applies lower environmental standards to its external activities beyond the EU. Furthermore, it also undermines one of the main conceptions of human rights law, which is the inherent universality and indivisibility of rights.<sup>342</sup> The universal aspect of human rights is especially important when discussing the right to a healthy environment, due to the global nature of climate change. To apply lower environmental standards in regions outside the EU involves a risk to violate the right to a healthy environment for individuals in those regions. Additionally, it involves a risk to violate the right to a healthy environment all over the world, including Europe, as the effects of climate change are not limited to specific counties or districts. The effects of climate change are global, the EIB must therefore adopt a holistic understanding of human rights concerning the environment and recognize that human rights are indivisible, interdependent, and interrelated.<sup>343</sup> The universality and indivisibility of human rights are accentuated in the NDICI regulation, which stipulates that human rights, including their universality and indivisibility, shall be promoted and developed through external activities.<sup>344</sup> The concept of the intersection of human rights is a highly relevant concept when discussing the right to a healthy environment as climate change will not only affect the right to a healthy environment but also e.g., the right to health, the right to life, and the right to property, which has been established in the Framework Principles and human rights case law. Due to the interdependence of human rights, the EIB must acknowledge that its environmental impacts affect all human rights and must promote and respect those human rights as argued in the previous section. This position should be included in the CBR.

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<sup>340</sup> Ibid, Article 8(1-2).

<sup>341</sup> Ibid, Article 31(1-2).

<sup>342</sup> Besson (nr 99) p. 36.

<sup>343</sup> van Boven T, 'Categories of Rights' in Moeckli D, Shah S & Sivakumaran S (ed.) *International Human Rights Law*, 3<sup>rd</sup> edition (Oxford University Press, 2018) p. 135.

<sup>344</sup> NDICI, Article 8(1-2).

Hence, the double standards taken by the EIB are contradictory as the EIB repeatedly stresses the global nature of environmental issues and the importance of the financial sector to achieve the goals set out in the Green Deal and Paris Agreement. It is especially contradictory due to its claim to lead the development of sustainable finance. Hence, these practices once again fail to create a comprehensive framework for assessing EIB operations and to secure that *all* activities support Paris-aligned operations.

## 5.2.2 Transparency and Accountability

Another vital aspect to guarantee the right to a healthy environment is environmental participatory rights. Procedural rights in the environmental context were firstly recognized in the Rio Declaration that grants rights to access information from public authorities concerning environmental matters, the right to public participation, and effective access to justice.<sup>345</sup> These rights were developed into legally binding obligations through the adoption of the Aarhus Convention, which clarified the connection to the right to a healthy environment, as the procedural rights guaranteed in the Convention aim to fulfil the main objective, which is “[...] to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being”.<sup>346</sup> The Aarhus Convention thereby marks an important step to take practical action to guarantee the right to a healthy environment and to create legally binding obligations for State Parties to the Convention, such as the EU.

The obligation to provide environmental information has been established several times, both by the CJEU in *ClientEarth v. European Investment Bank* and by the EU Ombudsman, who clarified that the EIB shall provide environmental information for projects financed by the EIB alone and through financial intermediaries.<sup>347</sup> The establishment of these obligations is important, especially as the substantive obligations related to the right to a healthy environment remain unclear for institutions such as MDBs. However, the procedural aspect of the right to a healthy environment does evidently apply to the EIB.

It is problematic that an MDB of this dimension, and with the leverage as an EU institution, repeatedly avoids environmental scrutiny. The EIB commits to support €1 trillion of investments in climate action and environmental sustainability by 2030 and will increase these

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<sup>345</sup> See chapter 2.2 on the development of human rights and the environment; Rio Declaration, Principle 10.

<sup>346</sup> Aarhus Convention, Article 1.

<sup>347</sup> See chapter 4.2.5.4.

investments to exceed 50% of its lending operations. Additionally, all projects shall align with the Paris Agreement.<sup>348</sup> Efforts to examine whether the EIB fulfils these commitments will be prevented by the lack of access to environmental information and the actual impacts on the right to a healthy environment will remain unidentified. This is especially problematic with projects financed by financial intermediaries, which carry out one-third of the EIBs investments in 2020. The EIB rarely publishes the name of financial intermediaries or the nature of the projects which has been the subject of critique by civil society and the European Parliament.<sup>349</sup> From a human rights law perspective, this is a cause for concern. Both the EIB and other financial intermediaries can elude accountability as their impacts on ecosystems and human life, health, and property are unknown. Hence, substantial rights might be at risk without the ability to distribute responsibility, which limits effective access to justice in case of human rights violations and environmental harm.

Transparency is a vital component of environmental protection and guarantees the right to a healthy environment. It enables the prevention of potential violations of the right to a healthy environment but also ensures that the right to a healthy environment is accessible when the environmental harm has already been done. This is of fundamental importance for a financial institution like the EIB, which supports projects all over the world as a representative of the EU. Thus, it may contribute to adverse human rights and environmental effects on a global scale. There must be effective and adequate measures to verify that supported projects are consistent with environmental and human rights law, including the EIBs internal frameworks, to provide details of its environmental impacts and effects related to the right to a healthy environment.

### **5.3 An International Climate Bank?**

The EIB approach to environmental matters and human rights has rapidly developed since the end of the 20<sup>th</sup> century, and the EIB claims to have high environmental aspirations when adopting the CBR. Nevertheless, the examination of the CBR demonstrates the EIB neglects to adopt a human rights-based approach to climate change and climate action, as human rights considerations are absent from the CBR framework despite obligations to do so. The right to a healthy environment has evolved into a well-established legal principle and has been

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<sup>348</sup> CBR (nr 25) paras. 2 & 6.

<sup>349</sup> See chapter 4.2.2 & 4.2.5.4.

acknowledged as a human right, which signals the comprehensive consensus that this is a right worthy of protection. It is problematic that an institution of the magnitude and influence of the EIB neglects to include this approach in its environmental framework. This problem is further accentuated due to the EIB's effects on the human and natural environment through its lending activities. Hence, the EIB must commit itself to fully complying with the obligations of the right to a healthy environment to tackle these issues. The examination of the CBR in relation to the obligations of the right to a healthy environment underlines that there is still a long way to go before the EIB could be classified as a "climate bank".

There are shortcomings of the internal environmental commitments in the EIB, but there is also a need to discuss this issue from a wider perspective. The EIB clearly profile itself as the first international climate bank, but this thesis argues that the EIB should go further than merely complying with the right to a healthy environment. As pointed out several times, global warming is already causing severe harm to the well-being of human beings, harm which will become worse *even* if global warming is limited to 1.5°C above pre-industrial levels. Hence, the measures set out in the Paris Agreement and the Green Deal are merely set out to prevent disaster to our wellbeing and ecological systems. More must be done to prevent irreversible harm, as human beings are already suffering the consequences of global warming, and the right to a healthy environment is already being violated on a big scale. Thus, it is problematic that the CBR aims to achieve international standards that might be set too low from the start. To truly earn its self-announced position as a "climate bank", the EIB should go further than simply rely on the goals set out in the Paris Agreement or the Green Deal.

There is no doubt that the transition to a green economy through sustainable finance is an important step to tackling climate change, but can we rely on sustainable finance to tackle climate change? As discussed in chapter 4.2.4, the EU highly relies on the financial pillar to achieve the goals of the Green Deal. The goal is to promote economic growth through sustainable finance, but there are already indications that the EU has failed to implement a plan to achieve the promised reduction of emissions by 2030. However, the goal to limit global warming to 1.5°C offers no margin to fail, as exceeding 1.5°C will result in devastating consequences. The goals should thereby be more ambitious, instead of merely offering a promise of a green transition of the economy to reach the goals of the Paris Agreement. Sustainable finance is vital for climate change mitigation, but it might generate a false reassurance to not deal with the issues at hand. The battle against climate change will not only

require a full transformation of the economy but will require the inclusion of complex issues of economic growth, consumption, and resource distribution which all contribute to global warming, in addition to green growth. If sustainable finance is given too much weight and presented as the solution to climate change, the adverse impacts of such an approach may be noticed when it is already too late.

## **5.4 Concluding Remarks**

This chapter has aimed to answer the main research question, which is: to what extent are the environmental policies adopted by the EIB consistent with the right to a healthy environment? The conclusion reached is that the EIB has neglected to incorporate a human rights-based approach to its environmental policies, thereby failing to align its policies with the obligations of the right to a healthy environment. It is problematic that the EIB neglects to acknowledge its substantive obligations to the right to a healthy environment and repeatedly avoids complying with its established procedural obligations. Hence, this reaches the conclusion that the EIB has a long way to go before becoming a “climate bank”.

A wider issue discussed in this chapter is whether the standards set out in the CBR, the Green Deal and the Paris Agreement are enough to combat climate change. Indications show that the goals set out in the Paris Agreement might be too low to protect ecological and human systems, and the EU has not presented a plan to achieve the goals set out in the Green Deal. Hence, to effectively tackle climate change and develop into an international climate bank, the EIB should go further than merely aiming to comply with the Green Deal and the Paris Agreement.

## 6 Final Conclusion

Financial institutions are seldom the focus when discussing climate change and its impact on human rights, but as highlighted throughout this thesis, MDBs do in fact play a vital role in the fight against climate change and environmental degradation. The effects of MDBs have been further emphasized over the last decade which has raised the pressure on MDBs to take further climate action. They can lead the transition to a “green” economy by shifting finance flows to a sustainable path toward lower GHG and CO<sub>2</sub> emissions and taking other environmental and social matters into consideration. The EIB has pronounced itself as leading the transition to a green economy, claiming to have environmental considerations as its main priority. This development is overall positive. However, the findings in this thesis suggest that there is reason to be sceptical of whether the EIB shall be regarded as a “climate bank”.

As the role of the EIB in climate change mitigation and adoption becomes more prominent, there is a need to clarify its obligations to human rights law and the environment. This thesis has aimed to examine the alignment of international environmental policies adopted by the EIB, focusing on the CBR, with the international human rights standards on the right to a healthy environment. This thesis has emphasized the difficulties of clearly establishing the human rights obligations of the EIB due to its dual character, both as a private commercial entity but also as an autonomous EU institution with its own international legal personality. The EIB continues to rely on its position as an autonomous institution for its financial activities to neglect human rights and environmental concerns, even though the EU has been pushing the EIB to further take environmental matters into consideration in its financing activities. However, despite its financial autonomy, this thesis has shown that the EIB is bound by the EU human rights framework related to the environment and is obliged to ensure that a high level of environmental protection is integrated in its policies.

Even though the EIB has not explicitly recognized an obligation to comply with the right to a healthy environment, the EIB is bound by Article 37 of the Charter. The Charter does not establish an individually enforceable right to environmental protection, but these obligations have been recognized by the ECtHR which recognizes human rights-based environmental protection in its jurisprudence. Hence, the ECtHR has created indirect protection of the right to life and the right to family life. The interrelationship between the Charter and the indirect

protection of the ECHR gives the Charter a more far-reaching environmental protection, as corresponding Charter rights shall be given the same meaning and scope. In addition, the procedural environmental obligations of the Aarhus Convention apply to the EIB, as has been established by the CJEU and EU Ombudsman. Altogether, this thesis finds that the EIB has both substantive and procedural human rights obligations to the right to a healthy environment.

As the human rights obligation has been established, it has been necessary to examine to what extent the environmental policies, focusing on the CBR, adopted by the EIB are consistent with the right to a healthy environment. Several shortcomings of the EIBs internal framework have been emphasized which undermines its self-appointed position as an international climate bank. The main critique delivered is the failure to adopt a human rights-based approach to its environmental commitments, which risks preventing the possibility to tackle the environmental issues at hand. The right to a healthy environment underlines the inherent universality and indivisibility of rights, due to the global nature of climate change. Hence, the EIB must adopt a holistic understanding of human rights to the environment to acknowledge that its financial activities might not only affect the environment and climate change, but also the right to life, the right to health, and thereby the right to a healthy environment. The EIB must perform an operative translation of the CBR to acknowledge how its financial activities affect the enjoyment of human rights. This should include a proper application of applicable legal human rights frameworks related to environmental protection, to ensure that its internal environmental framework is consistent with the right to a healthy environment.

This thesis has presented a quite gloomy picture, so where does all of this leave us? The transition towards sustainable finance is one of many measures in the battle against climate change. Additional measures must be taken as sustainable finance is insufficient to tackle climate change. An institution like the EIB, with the magnitude and influence of being the world's biggest MDB, should go further than merely striving to comply with the Green Deal and the Paris Agreement, especially when claiming the position as the first international climate bank. We constantly receive the same message – major adjustments must be taken immediately to prevent a climate disaster and drastic action must be taken to reach the 1.5°C goal of the Paris Agreement. This will merely prevent the worst effects of climate change. The EIB holds a crucial position to influence future development, which requires greater efforts than previously taken. To set higher standards than simply the bare minimum would affect projects all over the world, contributing to tackling climate change on a large scale. It would also set an example for



other MDBs to follow the same path if a major and influential bank such as the EIB would seriously incorporate environmental concerns into its lending policies and to fully recognize its obligations of the right to a healthy environment. Sadly, there is no indication of the EIB taking a turn to adopt more far-reaching measures than the Green Deal and the Paris Agreement. In this case, the EIB should at least properly strive to fulfil its obligations related to the right to a healthy environment, to move a bit closer to becoming the “EU climate bank”.

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