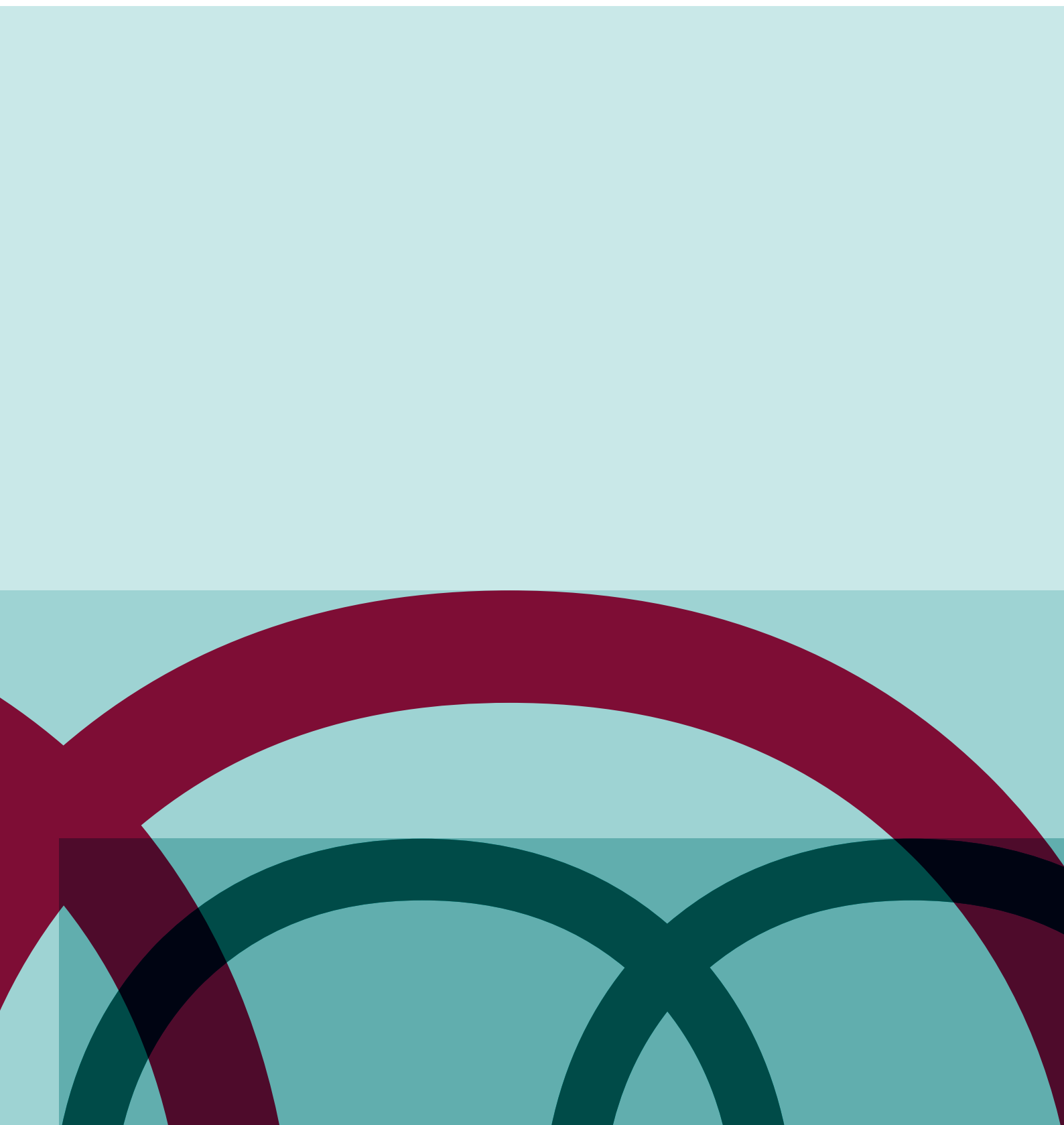




european network on
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The responsible finance standards of multilateral institutions: state of play

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With financial support from:

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List of acronyms

AAAA	Addis Ababa Action Agenda
ADB	Asian Development Bank
AfDB	African Development Bank
AML	anti-money laundering
APEC	Asia-Pacific Economic Cooperation
CAO	Compliance Advisor Ombudsman
CFT	Counterterrorist Financing
CPIA	Country Policy and Institutional Assessment
CSO	Civil society organisation
CSR	Corporate Social Responsibility
DFI	Development Finance Institution
DSA	Debt Sustainability Analysis
DSF	Debt Sustainability Framework
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EITI	Extractive Industries Transparency Initiative
ESG	Environmental, social and corporate governance
ESMS	Environmental and Social Management System
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FSB	Financial Stability Board
FSRB	FATF-style regional body
GDP	Gross Domestic Product
IDB	Inter-American Development Bank
IFC	International Finance Corporation
ILO	International Labour Organisation
IMF	International Monetary Fund
IPFSD	Investment Policy Framework for Sustainable Development
LICs	Low-Income Countries
MNE	Multinational Enterprise
NCPs	National Contact Points
OECD	Organisation for Economic Co-operation and Development
PPP	Public-Private Partnership
PPRSLB	Principles on Promoting Responsible Sovereign Lending and Borrowing
PRI	Principles for Responsible Investment
SDG	Sustainable Development Goals
TUAC	Trade Union Advisory Committee
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations General Assembly
UNGPs	UN Guiding Principles on Business and Human Rights

1. Introduction: mapping existing standards that promote responsible finance

Eurodad's report *The state of finance for developing countries 2014* showed that developing countries continue to lose significantly more financial resources than they gain due to failings in the international economic and monetary system.¹ In addition, as Eurodad's report setting out key challenges for policy makers in advance of last year's UN summit on Financing for Development in Addis Ababa argued, the quality of the financing that developing countries receive also needs improvement.²

To assess and improve development finance, a responsible finance framework is needed. In 2008, Eurodad released its first *Responsible Finance Charter*. The Charter outlined which standards are needed to ensure that public lending to developing countries actively delivers positive development outcomes. It was revised in 2011, and its scope broadened to include publicly-backed private lending and investment with a development purpose.³

Most of the standard-setting institutions that were mentioned in Eurodad's Charter still set the tone today at the national, regional and global levels, including the Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises, the United Nations' Guiding Principles on Business and Human Rights and the Equator Principles.

However, since 2011 a significant number of old standards have been revised or are currently under review. For example, the Financial Action Task Force (FATF) revised its standards on anti-money laundering in 2012, while the World Bank and International Monetary Fund (IMF) are currently revising the debt sustainability framework for low-income countries (LICs).

Several new standards have also arrived on the global stage, including the OECD's High-Level Principles of Long-term Investment Financing by Institutional Investors, and the United Nations Conference on Trade and Development (UNCTAD) Roadmap on Sovereign Debt Workouts and Principles on Promoting Responsible Lending and Borrowing.

Five years after the last revision of Eurodad's Charter, this briefing gives a timely overview of responsible finance standards promoted by various official multilateral or international organisations, examining:

- the **Issues** they cover,
- the **Actors** they seek to or claim to influence; and
- the mechanisms they have in place to encourage or enforce **Implementation**.

The briefing does not cover standards that only apply to one institution,⁴ or that are still in development; Annex 1 lists examples of such standards that are not in this briefing. We have attempted to cover the major standards devised by multilateral or international organisations, but recognise that we can extend the scope, and would welcome feedback and suggestions for other initiatives to examine.

Table 1:
Responsible finance standards covered in this briefing

Standard	Year of latest revision	Voluntary/mandatory	Aim ⁵	Private sector/official/CSO initiative
United Nations				
UN Principles for Responsible Investment (UN PRI)	2006	Voluntary	Raise awareness about responsible investment among investors and support their engagements with companies and policymakers on environmental, social and corporate governance issues	Official
UNCTAD Investment policy framework for sustainable development	2015	Voluntary	Help policymakers formulate, negotiate and review development-friendly investment policies and agreements	Official
UNCTAD Principles on Responsible Sovereign Lending and Borrowing	2012	Voluntary	Reduce the frequency and severity of debt crises; improve public spending and ensure debt sustainability	Official
UNCTAD Roadmap and Guide on Sovereign Debt Workouts	2015	Voluntary	Resolve future sovereign debt crises	Official
UN Basic Principles on Sovereign Debt Restructuring	2015	Voluntary	Guide sovereign debt restructuring processes	Official
UN Guiding Principles on Business and Human Rights	2011	Voluntary	Prevent and address the risk of adverse human rights impacts linked to business activity	Official initiative with participation of private sector
G20				
G20/OECD High level principles of long-term investment financing by institutional investors	2013	Voluntary	Help governments facilitate and promote long-term investment by institutional investors, particularly among institutions such as pension funds, insurers and sovereign wealth funds	Official
OECD				
OECD guidelines for multinational enterprises	2011	Voluntary	Encourage multinational enterprises to conduct business responsibly	Official initiative with participation of private sector
OECD Principles for Public Governance of Public-Private Partnerships (PPPs)	2012	Voluntary	Guide policymakers on how PPPs can represent value for money for the public sector	Official
World Bank Group				
World Bank/IMF debt sustainability framework for LICs	2005 (undergoing revision)	Mandatory assessment, voluntary compliance	Guide the borrowing decisions of low-income countries	Official
The Equator Principles	2006	Voluntary	Provide a risk management framework to help financial institutions determine, assess and manage environmental risk in projects	Private sector
IFC Performance Standards	2012	Mandatory for clients	Provide guidance on how to identify, avoid, mitigate and manage risks and impacts in IFC projects	Official
Other actors				
Extractive Industries Transparency Initiative (EITI)	2003	Voluntary	Promote public reporting of revenue flows from extractive industries to governments	Official, private sector & CSOs
FATF recommendations on anti-money laundering	2012 (last updated 2015)	Voluntary	Set and promote implementation of anti-money laundering standards	Official

2. Main characteristics of standards

The standards covered in this briefing have different characteristics as they deal with a large variety of issues, are different in scope and are implemented to different degrees. This chapter gives an overview of:

- **Issues** covered by each set of standards;
- **Actors**, including the level of adoption and by which institutions and countries; and
- **Implementation**: the specific mechanisms that the institutions have in place to enforce or incentivise compliance.

The chapter is divided into different sections on the basis of the initiating institutions. Chapter 2.1 focuses on the UN, chapter 2.2 sheds light on the G20, chapter 2.3 takes a deeper look at OECD initiatives, chapter 2.4 focuses on standards put forward by the World Bank Group and finally, chapter 2.5 assesses some of the standards developed by other actors.

Tables 2 and 3 summarise the issues covered by the different standards, mapped against those included in the Charter, and the actors they target.

Following the adoption of the Addis Ababa Action Agenda (AAAA) and the Sustainable Development Goals (SDGs), the need for ambitious responsible finance standards has never been more evident. Responsible finance standards should ensure that lending and investment actively deliver positive development outcomes. For that to happen, it is of critical importance to have a clear-eyed view of the current state of play. This briefing hopes to make a contribution to that understanding by mapping the different official standards at play and examining the issues they cover, the actors they target, and the ways in which they encourage or enforce implementation.

**Table 2:
Coverage of issues listed
in Eurodad's Responsible
Finance Charter**

NB: This table does not suggest that the standards listed meet the requirements of the Charter, merely that they attempt to cover standards related to each particular section.

Standard	Protection of human rights	Protection of the environment	Development effectiveness	Tax	Procurement	Public consent & transparency	Dispute settlement
United Nations							
UN Principles for Responsible Investment (UN PRI)	●	●		●		●	
UNCTAD Investment policy framework for sustainable development			●	●	●		
UNCTAD Principles on Responsible Sovereign Lending and Borrowing	●	●		●		●	
UNCTAD Roadmap and Guide on Sovereign Debt Workouts	●					●	
UN Basic Principles on Sovereign Debt Restructuring	●					●	
UN Guiding Principles on Business and Human Rights	●					●	●
G20							
G20/OECD High level principles of long-term investment financing by institutional investors		●		●	●	●	
OECD							
OECD guidelines for multinational enterprises	●	●		●		●	●
OECD Principles for Public Governance of Public-Private Partnerships (PPPs)						●	●
World Bank Group							
World Bank/IMF debt sustainability framework for LICs							
The Equator Principles	●	●				●	●
IFC Performance Standards	●	●				●	●
Other actors							
Extractive Industries Transparency Initiative (EITI)				●		●	
FATF recommendations on anti-money laundering	●			●		●	

**Table 3:
Actors targeted
by standards**

● = main target

○ = secondary targets

Standard	National governments	Multinational enterprises	Small and Medium-sized enterprises	Public development banks	DFI investee companies	Institutional investors ⁶	Private banks
United Nations							
UN Principles for Responsible Investment (UN PRI)		○ Financial sector				●	●
UNCTAD Investment policy framework for sustainable development	●						
UNCTAD Principles on Responsible Sovereign Lending and Borrowing	●			○		○	○
UNCTAD Roadmap and Guide on Sovereign Debt Workouts	●					○	○
UN Basic Principles on Sovereign Debt Restructuring	●					○	○
UN Guiding Principles on Business and Human Rights	●	●	●	●	●	●	●
G20							
G20/OECD High level principles of long-term investment financing by institutional investors	●		○ Financial sector			○	○
OECD							
OECD guidelines for multinational enterprises	●	●		● ⁷	○ ⁸	●	● ⁹
OECD Principles for Public Governance of Public-Private Partnerships (PPPs)	●						
World Bank Group							
World Bank/IMF debt sustainability framework for LICs	●			●			
The Equator Principles		● Financial sector		○ ¹⁰			●
IFC Performance Standards					●		
Other actors							
Extractive Industries Transparency Initiative (EITI)	●	●	●		● Extractive sector		
FATF recommendations on anti-money laundering	●			○			

2.1. UN

2.1.1. Principles for Responsible Investment initiative (PRI)

The UN-supported PRI¹¹ was founded in 2006 on the initiative of then Secretary-General Kofi Annan. The PRI invites large institutional investors and asset managers to work together with the UN to adopt and effectively implement environmental, social and corporate governance (ESG) principles.

2.1.1.1. Issues covered

The PRI puts forward six principles, covering:

1. The integration of ESG issues into investment analyses;
2. Policies and decision-making processes;
3. Disclosure on ESG issues by investors' clients;
4. The acceptance and implementation of the principles within the financial sector;
5. Implementation; and
6. Reporting on progress.

The specific ESG issues covered by the principles are quite extensive: they range from climate change impact, workplace health and safety, child labour and fair trade to corruption, shareholder rights and public disclosure. The PRI recently also published a guidance to promote corporate tax responsibility.¹²

2.1.1.2. Actors

The number of signatory companies and assets under their management has increased significantly. The PRI now has almost 1,500 signatories from over 50 countries representing US\$59 trillion of assets, up from US\$4 trillion at the PRI's launch in 2006.¹³ Signatories comprise investment managers, asset owners and professional service partners. Approximately two-thirds of the signatories are investment managers.¹⁴ Two hundred and twenty new signatories joined in 2015.¹⁵

2.1.1.3. Implementation mechanisms

To incentivise signatories to implement the principles, the PRI produces several guides and case studies.¹⁶ These and other publications merely serve as guidance on how to implement the principles in practice and investors have no obligation to take them into account. The principles do not have a sanction or enforcement mechanism, but reporting on implementation is compulsory for all asset owner and investment manager signatories. The PRI has a specific reporting framework in place through which signatories provide details of their organisational characteristics, asset mix, responsible investment policy and responsible investment governance. However, only reporting on "core practices" is mandatory for all signatories. These only capture the essence of the principles and include "organisational overview" and "strategy and governance".

It is worth noting that the 2015 report on progress found that "responsible investment activities need to be integrated more deeply."¹⁷

2.1.2. UNCTAD Investment Policy Framework for Sustainable Development (IPFSD)

The UNCTAD Investment Policy Framework was first launched in 2012 and was updated in 2015 and relaunched at the Financing for Development Conference in Addis Ababa. The framework "aims to serve as a point of reference for policymakers in formulating national investment policies, in negotiating or reviewing IIAs [International Investment Agreements], and in designing concrete policy initiatives to promote investment in priority sectors for sustainable development."¹⁸

In addition, UNCTAD's World Investment Report, which focuses on the latest trends in foreign direct investment (FDI), also offers options, guidance and opinion on investment policymaking.¹⁹

2.1.2.1. Issues covered²⁰

The framework consists of an overarching set of 11 "core principles" for investment policymaking that serve as "'design criteria' for investment strategies, policies and treaties." One of the main objectives of the principles is to encourage policy coherence, as they call for "integrating investment in overall development strategies" and, vice versa, "enhancing sustainable development as part of investment policies". In addition, the principles focus on balancing rights and obligations of states and investors in the context of investment protection and promotion, and including Corporate Social Responsibility (CSR) into investment policymaking. They also aim to encourage international cooperation on investment-related challenges.

Within an overall framework of supporting “inclusive growth and sustainable development” (principle 1), the principles call on policymakers to ground their investment policies in countries’ overall development strategies (2). They further argue that investment policies should be “developed involving all stakeholders” and “to high standards of public governance” (3) and “be regularly reviewed for effectiveness and relevance” (4). They should “be balanced in setting out rights and responsibilities of States and investors” (5) but emphasise the right of each country to establish entry and operational conditions for foreign investment, “subject to international commitments, in the interest of the public good and to minimize potential negative effects” (6). This should establish “stable and predictable” conditions for investment (7) and “provide adequate protection to established investors”. (8) In aligning to the SDGs, they should “minimise the risk of harmful competition for investment” (9) and should also promote compliance with “best international practices of corporate social responsibility and good corporate governance.” (10) Finally, the principles recommend international cooperation to address challenges “particularly in least developed countries” and “to avoid investment protectionism.” (11)

On the basis of these principles the framework elaborates on national guidelines and international guidance (for designing investment agreements and treaties) for policymakers “at strategic, normative, and administrative levels”, and includes detailed suggestions in each area and an ‘action menu’ for promoting investment in priority or under-served sectors.

While the principles and guidance are focussed on investment policy, this inevitably leads them into a broader set of policy issues, as “reaping the development benefits from investment requires regulations covering policy areas beyond investment policy per se, such as trade, taxation, intellectual property, competition, labour market regulation, environmental policies and access to land.” For example, some of the guidance goes more into detail on tax-related standards, pointing out the need for “well-established and clearly defined transfer pricing rules” and “international cooperation and effective exchange of information between tax authorities”.

2.1.2.2. Actors

The guidelines in the UNCTAD Investment Policy Framework are voluntary guidance for government policymakers.

2.1.2.3. Implementation mechanisms

There are no sanction or enforcement mechanisms: the Framework is a soft power instrument through which UNCTAD hopes to influence countries to follow its principles and guidance. This soft power influence may be strengthened by the following reviews that UNCTAD conducts at national level:

- UNCTAD publishes the “investment policy monitor”, which assesses how many investment policy measures have been taken in how many countries during a specific period in time. According to the latest edition, “new treaties continue to include provisions safeguarding (...) elements mentioned in (...) UNCTAD’s updated Investment Policy Framework for Sustainable Development.”²¹
- UNCTAD also publishes country-specific “investment policy reviews” that “are intended to help countries improve their investment policies and to familiarize governments and the international private sector with an individual country’s investment environment.”²²

However, the power of these approaches seems to rest solely on whether governments find the advice useful, as there are no efforts to publicly criticise countries, nor are any financing mechanisms linked to these.

2.1.3. UNCTAD Principles on Promoting Responsible Sovereign Lending and Borrowing (PPRSLB)

According to UNCTAD, the aim of these principles is “to reduce the frequency and severity of debt crises by developing a set of voluntary guidelines that promote and reinforce responsible sovereign lending and borrowing practices.”²³

2.1.3.1. Issues covered ²⁴

The PPRSLB consist of 15 principles that cover responsibilities for both lenders and borrowers. They address several responsibilities as part of the loan contracting process, such as agency (“lenders should recognize that government officials involved in sovereign lending and borrowing transactions are responsible for protecting public interest”), due authorisation (only legitimate actors may contract sovereign debt) and informed decisions. The first principle, for example, prescribes that “lenders should recognize that government officials involved in sovereign lending and borrowing transactions are responsible for protecting public interest”. Meanwhile, lenders should also “provide information to their sovereign customers to assist borrowers in making informed credit decisions” (principle 2) and “have a responsibility to determine, to the best of their ability, whether the financing has been appropriately authorized and whether the resulting credit agreements are valid and enforceable under relevant jurisdiction/s” (principle 3).

A significant advantage and innovation of the PPRSLB is that they cover the whole debt cycle. This means that they also include guidance that covers the social and environmental impacts of project lending. Principle 5, for example, states that “lenders financing a project in the debtor country have a responsibility to perform their own ex ante investigation into and, when applicable, post-disbursement monitoring of, the likely effects of the project, including its financial, operational, civil, social, cultural, and environmental implications.”

Importantly, eight of the 15 principles focus on the responsible use of lent monies. These cover issues such as binding agreements (“a sovereign debt contract is a binding obligation and should be honored” but “exceptional cases nonetheless can arise”²⁵); transparency (“the process for obtaining financing and assuming sovereign debt obligations and liabilities should be transparent”); and adequate management and monitoring (“debtors should design and implement a debt sustainability and management strategy and to ensure that their debt management is adequate”). They also address prompt and fair debt restructurings (“if a restructuring of sovereign debt obligations becomes unavoidable, it should be undertaken promptly, efficiently and fairly”).

2.1.3.2. Actors

The principles have been formally adopted by just a small number of UN member states. They also only received acknowledgements and endorsements from multilateral institutions and fora, for example, in the debt resolution of the 68th session of the UN General Assembly. In addition, some Member States of the G24 have expressed their support for the Principles, and the AAAA took note of the principles.²⁶

2.1.3.3. Implementation mechanisms

The principles are not accompanied by a sanction or enforcement mechanism. Only draft guidelines were launched in August 2014 to “provide policy makers with tools to gain a deeper understanding of the PPRSLB and offer options for implementing sound practices on responsible sovereign lending and borrowing, recognising specific conditions of each country.”²⁷

So far Norway appears to be the only signatory government that has taken action after endorsement, by auditing a sample of outstanding loans to developing countries in accordance with the Principles.²⁸

2.1.4. UNCTAD Roadmap and Guide on Sovereign Debt Workouts²⁹

In April 2015 UNCTAD published *Sovereign Debt Workouts: Going Forward Roadmap and Guide* in order to “improve the coherence, fairness and efficiency of sovereign debt workouts.” The document reflects the work, since 2013, of an UNCTAD-coordinated Working Group on a Debt Workout Mechanism. Legal and economic scholars and experts, NGOs (including Eurodad), multilateral and bilateral lenders, private sector representatives and other stakeholders were invited to take part in this working group.

2.1.4.1. Issues covered

The *Roadmap and Guide* puts forward five principles for sovereign debt workouts: legitimacy, impartiality, transparency, good faith and sustainability. Sustainability includes “...minimizing costs for economic and social rights and development in the debtor state.” In addition, it recommends four global reforms including the establishment of a Sovereign Debt Workout Institution.

The *Roadmap and Guide* outlines a process of steps that would constitute their recommended debt workout process, including steps that the debtor state should take prior to the workout process. To avoid debt restructurings from taking place too late, UNCTAD proposes that this process is largely driven by the debtor side with the support of impartial institutions. The roadmap would allow a debt standstill should the debtor states’ debt sustainability analyses show that the state is effectively insolvent. A variety of options for negotiations are presented, based on an independent debt sustainability analysis, with agreements binding on all parties, after a verification of claims and the opportunity to question their validity.

2.1.4.2. Actors

The principles are directed at three actors:

1. Governments who “may wish to be guided by this instrument when facing debt restructuring.”
2. Legal and judicial practitioners, who “may use the Guide as an instrument to support their legal opinions and judicial reasoning when called upon to resolve issues related to sovereign debt restructurings.”
3. The parties to sovereign debt contracts, who “may wish to draw on the Guide to anticipate what is considered internationally acceptable in a restructuring situation.”

However, given that the process is intended to be driven by the debtor state, and mediated by impartial (presumably public) institutions, it is clear that the main focus is on governments. In addition, there are specific recommendations for courts deciding sovereign debt cases.

2.1.4.3. Implementation mechanisms

There is no formal enforcement and sanction mechanism. The *Roadmap and Guide* consists of options and principles. The nature of sovereign debt workouts means it would be hard for states to adopt these principles or guidelines unilaterally, which is why UNCTAD recommends the establishment of the international Sovereign Debt Workout Institution, though a regional version might be regarded as an alternative.

The first opportunity for sovereign states to discuss implementation of the *Roadmap and Guide* was at the UN General Assembly (UNGA) Ad Hoc Committee on Sovereign Debt Restructuring, which led to the adoption on 10 September 2015 by the UN General Assembly of the “Basic Principles on Sovereign Debt Restructuring Processes” (see 2.1.5.), which echo and complement the principles of the *Roadmap and Guide*, although they do not deliver on the UNGA’s original aim of establishing a multilateral legal mechanism for sovereign debt restructuring. Unlike decisions made in the Security Council, General Assembly resolutions are non-binding and implementation efforts therefore differ.

2.1.5. UN Basic Principles on Sovereign Debt Restructuring³⁰

On 10 September 2015 the UN General Assembly adopted resolution 69/319 on Basic Principles on Sovereign Debt Restructuring Processes. With the resolution, the UN General Assembly declared that sovereign debt restructuring processes should be guided by nine basic principles. If implemented, these principles would represent a change to the current creditor-led debt workout system that has repeatedly failed indebted countries.

2.1.5.1. Issues covered

The resolution outlines nine principles that should be respected when restructuring sovereign debt: sovereignty, good faith, transparency, impartiality, equitable treatment, sovereign immunity, legitimacy, sustainability and majority restructuring. These principles are clearly taken from the UNCTAD *Roadmap and Guide* (see 2.1.4) but have been weakened in some cases, though potentially strengthened in others. For example:

- Transparency “can be achieved through the timely sharing of both data and processes related to sovereign debt workouts”. However, the *Roadmap and Guide* is stronger, “requiring that information on debt workout institutions, processes, and the underlying data is available to the public.”³¹

- Legitimacy is the need to “respect requirements of inclusiveness and the rule of law” which is more limited than the *Roadmap and Guide’s* requirements of “ownership, comprehensiveness, inclusiveness, predictability, and other aspects of the rule of law.”³²
- Majority restructuring implies that a “non-representative minority of creditors (...) must respect the decisions adopted by the majority of the creditors.” This was not explicitly stated as a principle in the *Roadmap and Guide*, but it did say that “Domestic or international courts or tribunals, which have jurisdiction for sovereign debt matters, could not recognize claims of uncooperative creditors to the extent that their enforcement contravenes good faith.”³³
- Sustainability “implies that sovereign debt restructuring workouts [should] (...) lead to a stable debt situation in the debtor state, preserving (...) creditors’ rights while promoting (...) economic growth and sustainable development, minimising economic and social costs, warranting the stability of the international financial system and respecting human rights.” The *Roadmap and Guide* uses a shorter formulation, requiring that “lead to a stable debt situation while minimizing costs for economic and social rights and development in the debtor state.”³⁴

2.1.5.2. Actors

Though the principles have been agreed by UN member state governments, they are intended to apply also to creditors as well, stressing “the obligation of sovereign debtors and their creditors to act in good faith and with a cooperative spirit to reach a consensual rearrangement of the debt of sovereign States.” As they do not go into any detail about how a debt workout process should actually work, in effect they provide less prescription about how creditors should act than the *Roadmap and Guide*.

2.1.5.3. Implementation mechanisms

As mentioned above, unlike the Security Council, which has the power to issue legally binding resolutions, General Assembly resolutions are difficult to enforce. There are no mechanisms in place to enforce implementation and sanction non-compliance. Yet UNGA resolutions can carry political weight. The resolution was adopted by a vote, and yielded a “yes” vote from 136 countries. However, it remains problematic that six countries, including some of the world’s most important financial centres voted “no”: the US, Germany, the UK, Japan, Israel and Canada.³⁵ They generally argue that such discussions must only take place within the IMF.

2.1.6. UN Guiding Principles on Business and Human Rights (UNGPs)^{36,37}

The UN Guiding Principles on Business and Human Rights ('Guiding Principles') were unanimously endorsed by the UN Human Rights Council in June 2011. The principles are based on the UN Framework for Business and Human Rights developed by Professor John Ruggie in his capacity as the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations. The UN Framework is a "conceptual framework" developed to provide a common basis for how to address the issue of business and human rights.

2.1.6.1. Issues covered

The Guiding Principles apply to the entire spectrum of internationally recognised human rights:

"An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises."

The Guiding Principles are divided into three sections:

1. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms" which includes setting out "clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations." In addition, states are expected to promote respect for human rights in enterprises they own or do business with. It also requires states to encourage multilateral institutions "to promote business respect for human rights."
2. *The corporate responsibility to respect human rights.* Businesses "should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." Businesses should make clear policy statements on this, put in place a due diligence process, and "Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute."

3. *Access to remedy.* "States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy."

The Guiding Principles make a distinction between the respective roles of the state and of business and the fact that these roles are independent of each other. States cannot use the power or importance of business as an excuse to not do their duty to protect human rights. Business enterprises in turn cannot use the failure of the state to protect as an excuse to avoid their responsibility to respect human rights.

2.1.6.2. Actors

The Guiding Principles are intended to apply "to all states and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure".

The Guiding Principles also state that businesses have a responsibility not just for respecting human rights impacts in their own operations, but throughout their supply chains.

Principle 13 includes that businesses should, "Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."

2.1.6.3. Implementation mechanisms

The Guiding Principles are not legally binding and there is no specific implementation mechanism in place. The UN Council on Human Rights has established a Working Group of Experts to promote the principles, but the real implementation mechanisms lie outside the UN. For example, the OECD Guidelines (see 2.3.1) incorporate many of the concepts of the Guiding Principles. The UNGPs have also influenced procedures adopted by international finance institutions (IFIs), such as social and environmental standards and due diligence policies, and featured in the European Commission's 2011 Communication on Corporate Social Responsibility and its 2015 status report on the EU's activities in implementing the UNGPs.³⁸

2.2. G20

2.2.1. G20/OECD High level principles of long-term investment financing by institutional investors³⁹

The G20/OECD high-level principles “assist OECD, G20 and other interested countries to facilitate and promote long-term investment by institutional investors”,⁴⁰ including pension funds, insurance companies and sovereign wealth funds. They were developed by the OECD Task Force on Institutional Investors and Long-Term Financing, which works “under the aegis of the OECD Committee on Financial Markets and Insurance and Private Pensions Committee” and is “...open to G20, FSB, APEC members and relevant international organisations”,⁴¹ though a full list of actual Task Force members does not appear to be publicly available.

The principles aim to help policymakers to design a framework, “which encourages institutional investors to act in line with their investment horizon and risk-return objectives, enhancing their capacity to provide a stable source of capital for the economy and facilitating the flow of capital into long-term investments.”⁴² This is based on the assumption that institutional investors have a long-term investment horizon, and that they may be willing to have a different perception of risk from other investors, for example, “they can follow a less cyclical investment pattern.”⁴³ The extent to which these assumptions hold true will vary.

G20 leaders endorsed the principles at their summit meeting in Saint Petersburg in September 2013.

2.2.1.1. Issues covered

The principles are intended to be consistent with already existing OECD recommendations and other international principles and recommendations; for example, the OECD Principles on Corporate Governance, and Guidelines for Multinational Enterprises (see section 2.3.1). The principles are also echoing broader guidelines applicable to all investors, such as the aforementioned PRI (see section 2.1.1).

The principles are in effect a grouping of an extensive list of sub-principles under eight headings:

1. Preconditions for long-term investments
2. Development of institutional investors and long-term savings
3. Governance of institutional investors, remuneration and asset management delegation
4. Financial regulation, valuation and tax treatment
5. Financing vehicles and support for long-term investment and collaboration among institutional investors
6. Investment restrictions
7. Information sharing and disclosure
8. Financial education, awareness and consumer protection

Many of the principles are extremely high level, assuming an implicit understanding of what is meant. For example, the principle that “governments should support stable macroeconomic conditions conducive to longer-term investment, by maintaining credible monetary policy frameworks, responsible fiscal policies and sound financial sector regulatory environments.”

However, in reality there is a strong assumption underpinning the principles that investors should not be directed by governments, which should instead focus on ensuring “that the legal and institutional preconditions are favourable for the development of institutional investors with a longer term investment horizon.” The conclusion of this approach is that the growth and internationalisation of institutional investors should be encouraged: “Governments should collaborate to promote greater consistency and strengthen the regulatory and supervisory frameworks for institutional investors, which may facilitate open, free and orderly capital flows and long-term cross-border investment by institutional investors.”

On the other hand, governments should play an active role in opening up their projects and financing to institutional investors. For example, “Where appropriate, governments should provide opportunities for private sector participation in long-term investment projects such as infrastructure (...) via, for instance, public procurement and public-private partnerships”. In addition, governments can turn their own borrowing needs into vehicles for long-term investors, and “should consider issuing appropriate long-term instruments”.

Importantly, the principles rule out the direction of institutional investors away from socially or environmentally negative investments, with the only “restrictions on long-term investment by institutional investors” to be those “consistent with diversification and financial regulation objectives.” There are also no recommendations on improving transparency to the public, and information provision principles are limited to those that “can facilitate monitoring by supervisors, enhance the knowledge of institutional investors, reduce information asymmetries and improve the functioning and liquidity of markets.”

2.2.1.2. Actors

The high-level principles have been endorsed by G20 leaders and are intended to guide domestic policymakers when setting regulations and policy not just for institutional investors, but also the financial sector as a whole, and potentially sectors to which the principles hope to direct financing, particularly infrastructure. "The principles provide general orientation and guidance, are not meant to be exhaustive and focus on selected major issues."

However, they are not intended as guidelines for institutional investors themselves.

2.2.1.3. Implementation mechanisms

Following the endorsement of the principles by G20 leaders, the OECD started to identify approaches for their implementation. So far, the OECD has published several reports to provide guidance, including on effective approaches to support implementation of the principles, an analysis of government and market-based instruments and incentives for stimulating the financing of long-term investment, and the taxonomy of instruments. The OECD also conducts an annual survey of large pension funds. These reports and surveys are only soft instruments to encourage implementation.

2.3. OECD

2.3.1. OECD guidelines for multinational enterprises (MNEs)⁴⁴

The OECD guidelines for MNEs are a set of principles and standards, designed as "recommendations addressed by governments to multinational enterprises" in areas such as human rights, employment, information disclosure, environment and taxation. They form one part of the OECD Declaration on International Investment and Multinational Enterprises, "the other elements of which relate to national treatment, conflicting requirements on enterprises, and international investment incentives and disincentives."

The guidelines were first adopted in 1976, but were revised in 2011 and now include a specific chapter on human rights due diligence, based on the UNGPs (see 2.1.6.).

The international coalition of civil society organisations, OECD Watch, has produced a detailed summary and critique of the Guidelines, entitled *Calling for Corporate Accountability*.⁴⁵

2.3.1.1. Issues covered

The guidelines encourage MNEs to abide by an extensive set of principles. In addition to chapters on Concepts and Principles, and General Policies (which includes not discriminating against whistleblowers), there are chapters on:

Disclosure

The basic framework is "timely and accurate information on all material matters regarding [MNE's] activities, structure, financial situation, performance, ownership and governance."⁴⁶ To determine what information should be disclosed at a minimum, the Guidelines use the concept of materiality. They define material information as "information whose omission or misstatement could influence the economic decisions taken by users of information." This definition is obviously open to a huge degree of interpretation, with the possible scope ranging from very narrow (focused, for example, on information for shareholders) to very broad (for example information for affected communities and tax authorities).

The guidelines on disclosure are divided into two sections:

- The first section focuses on a limited regime of disclosure of financial and governance information, and is "identical" to the items outlined in the *Principles of Corporate Governance*.⁴⁷ Crucially, financial reporting is not required on a country by country basis.
- In the second section, which includes social and environmental impacts, the guidelines state that disclosure is merely "encouraged" and is limited to reporting on other codes or policies to which the enterprise has already signed up.

OECD Watch argues that "the disclosure provisions in the Guidelines are weaker than today's international best practices, but do include some aspects that reflect NGO priorities when it comes to the disclosure practices of MNEs."⁴⁸

Human Rights

The OECD argues that this chapter "draws upon the United Nations Framework for Business and Human Rights" (see section 2.1.6) "and is in line with the Guiding Principles for its implementation." In general terms this is true, though the OECD's formulation is a lot shorter, and as a result may be perceived to be weaker in some areas. OECD Watch nonetheless argues that "the inclusion of this chapter is a major achievement [of the 2011 revision]."⁴⁹

Employment and Industrial Relations

This section highlights the right of workers (a broad term including outsourced or informal employees) to join trade unions and to engage in collective bargaining, to provide facilities and information to support this, and not to undermine this right. The guidelines for example prohibit MNEs "to threaten to transfer the whole or part of an operating unit from the country concerned ... in order to influence unfairly ... negotiations or to hinder the exercise of a right to organise."

It requires MNEs to not engage in child or compulsory labour, and to "respect equality of opportunity of treatment in employment and not discriminate" on any grounds.

Its recommendations on wages are limited to an encouragement to "provide the best possible wages, benefits and conditions of work ... related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families."

The Trade Union Advisory Committee (TUAC) produced its own guide to the Guidelines, which criticises their implementation, but overall says that the 2011 update makes them "more fit-for-purpose and more relevant for workers around the world."⁵⁰

Environment

The Guidelines encourage MNEs to establish environmental management systems, including setting objectives "for improved environmental performance and resource utilisation" and to collect information and monitor these. This includes assessing full life cycle impacts of "processes, goods and services." MNEs are encouraged to "continually seek to improve corporate environmental performance" through, for example, the adoption of new technologies.

Provision of public information on these, and "timely communication and consultation with the communities directly affected" is also encouraged "taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights."

OECD Watch argues that "the chapter on environment covers many key issues of importance to NGOs. This includes: the need for enterprises to conduct environmental impact assessments, to prevent or minimise environmental damage, to protect public health and safety and to contribute to the wider goal of sustainable development."⁵¹

Combatting Bribery

The Guidelines say MNEs should not engage in (broadly defined) bribery, following the 2009 Anti-Bribery Convention and the 2005 UN Convention Against Corruption, and should "adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery" and should make active efforts to make their stance well known, and make employees aware.

Consumer Interests

The Guidelines say that MNEs should, in addition to complying with the law, "Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions" and "Not make representations or omissions, nor engage in any other practices that are deceptive, misleading, fraudulent or unfair." They should also, "Provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms."

Science and Technology

OECD Watch says that, "Before the 2011 update of the Guidelines, the Science and Technology chapter had never been cited in complaints. Nonetheless, interesting provisions make reference to enterprises' responsibility to contribute to the development of local and national innovative capacity and adopt practices that permit the transfer and rapid diffusion of science and technology."⁵²

However, there is little detail in the explanatory text for the Guidelines as to how this could be achieved.

Competition

In effect, the only part of this short chapter that goes beyond complying with competition laws and regulations law may be the requirement to promote employee awareness and train senior management in competition law.

Taxation

Compliance with both “the letter and spirit of the tax laws and regulations of the host countries” is required,⁵³ and “Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems.”

The explanation of the two short paragraphs in this section says that, “Transactions should not be structured in a way that will have tax results that are inconsistent with the underlying economic consequences of the transaction unless there exists specific legislation designed to give that result.” On transfer pricing, the OECD’s (controversial) arm’s length principle is cited as: “Application of the arm’s length principle avoids inappropriate shifting of profits or losses and minimises risks of double taxation”. No mention is made of improvements to transparency such as country by country reporting or beneficial ownership reporting.

2.3.1.2. Actors

The Guidelines “are recommendations addressed by governments to multinational enterprises.” Observance of the guidelines is ‘recommended’ to all MNEs that are headquartered in the signatory countries by the governments of those countries. At the same time, the governments promise ‘national treatment’ for MNEs from other countries that adopt the Guidelines. This means that they should treat foreign-owned MNEs the same way that they treat domestic companies, but this does not extend to “the right of adhering governments to regulate the entry of foreign investment or the conditions of establishment of foreign enterprises.” They also promise to be transparent when providing incentives or disincentives for international investment, and to consult co-signatories to the Guidelines on such matters.

To date, all 34 OECD member countries and 12 non-members, including Argentina, Brazil and Tunisia, have signed the guidelines.⁵⁴ Adhering governments make a binding commitment to set up National Contact Points (NCPs) to promote the guidelines and provide assistance to stakeholders.

The guidelines apply irrespective of ownership – state-owned, public or private sector – including pension funds and asset managers in the financial sector. The Guidelines cover “all the entities within the multinational enterprise (parent companies and/or local entities).” Therefore subsidiaries of the parent MNE are covered, but this extends to some extent to other business relationships (such as suppliers, sub-contractors, franchises, licensees) as MNEs should, “Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.”

MNEs are expected, through their due diligence procedures, to identify risks of negative impacts arising from relationships with other actors in the supply chain, and “take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible.” There is leeway for interpretation of what this means, and MNEs can take action ranging from helping the supplier with risk mitigation efforts, to disengagement from the supplier.

Importantly, the guidelines apply wherever in the world MNEs operate and not just in the countries where they are headquartered.

2.3.1.3. Implementation mechanisms

“The countries [governments] adhering to the Guidelines make a binding commitment to implement them.” However, for the MNEs “observance of the Guidelines by enterprises is voluntary and not legally enforceable.”

What distinguishes the OECD Guidelines from other CSR instruments is that they have a dispute resolution mechanism for resolving conflicts regarding alleged misconduct. This mechanism is supported by the NCPs, which provide a platform for discussion to stakeholders to help find a resolution for issues arising from alleged violations. However, the impact of the mechanism and NCPs is limited. The resolution mechanism is a “soft law” instrument. It cannot deal with legal cases, and NCPs are not judicial bodies. Countries have a lot of flexibility in how they organise their NCPs “as long as such arrangements provide an effective basis for dealing with the broad range of issues covered by the Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government.”⁵⁵ Eurodad and others previously noted⁵⁶ that in too many countries the NCPs still do not function fully.⁵⁷

Furthermore, "OECD Watch recommends that NCPs not be housed in a single government department to avoid conflicts of interest (real or perceived) with the goals of the Guidelines. NCPs should be independent in nature and have an oversight body such as an ombudsman, steering board or a multi-stakeholder group that can advise on issues raised in complaints or on proper procedures for handling complaints."⁵⁸

2.3.2. OECD Principles for Public Governance of PPPs⁵⁹

The OECD Principles for Public Governance of PPPs provide guidance to policymakers on how PPPs can represent value for money for the public sector. They recommend member states to "take appropriate steps to ensure that Public-Private Partnerships are affordable, represent value for money and are transparently treated in the budget process."

2.3.2.1. Issues covered

The principles are threefold. They aim to (i) "establish a clear, predictable and legitimate institutional framework supported by competent and well-resourced authorities", (ii) "ground the selection of Public-Private Partnerships in value for money", (iii) "use the budgetary process transparently to minimise fiscal risks and ensure the integrity of the procurement process." Under these principles, there are 12 recommendations, several of which echo CSO demands on PPPs. The principles, for example:

- Call on governments to "disclose all information possible regarding the costs and contingent liabilities of the PPP. The information should include what and when the government will pay, and full details of guarantees and contingent liabilities."
- Argue that "the cost-benefit evaluations and the ranking of different projects should be made available to the public to encourage debate about what large infrastructure projects are the most important."
- State that "key risk factors and characteristics of specific projects should be evaluated by conducting a procurement option pre-test", which includes calculating "comparative costs of (a) finance (b) construction (c) operation ... over the whole lifetime of the project, in each alternative mode of procurement." This also includes measuring contingent liabilities.
- Recognise that risks cannot be reduced, only transferred, and that "public authorities cannot transfer to the private sector the risks associated with statutory responsibilities to maintain services."
- Call for the involvement of end-users in the design and monitoring process and an independent public oversight of PPP implementation to provide greater accountability and social control.

- Argue that for PPPs to work and to be legitimate, labour unions that are affected by the usage of PPPs, and civil society groups, should be actively involved as this can create transparency about problematic issues that might otherwise be overlooked. The guidelines state that, "Given their complexity and long-term scope engagement with civil society is a prerequisite for the successful use of PPPs."

The guidelines state that "there should be no institutional, procedural or accounting bias either in favour of or against Public-Private Partnerships," but there are elements within them that suggest they favour the use of PPPs. For example, the guidelines say that "critical skills to ensure value for money may need to be concentrated in a PPP Unit." While such a unit "should be used to assess the specific PPP compared to the traditional public investment route" it is also possible that such a unit could become an internal mechanism for encouraging the use of PPPs. In addition, "private investment will be facilitated if unnecessary red tape is removed and delays to approval processes are reduced," which "may require the coordination of approval processes in specific circumstances to remove regulatory obstacles to the delivery of PPPs."

Finally, it is not clear to what extent such detailed recommendations – which require significant public sector capacity to implement – could be applicable to developing countries. Indeed, it is clear that some parts are not written with the interest of developing countries in mind. For example, the recommendation that "it is beneficial to maintain an open and non-discriminatory investment environment and steps should be taken to ensure that domestic and foreign-owned firms can compete on an equal footing" would undermine developing countries' need to carefully manage foreign investment, and also to use procurement to support the development of domestic industries.

2.3.2.2. Actors

The principles and recommendations are directed to OECD and non-OECD member governments. OECD members and the Secretary-General are encouraged to adopt and further disseminate the recommendations, while non-OECD Members are also encouraged "to take account of and adhere" to them.

2.3.2.3. Implementation mechanisms

There is currently no information publicly available about implementation efforts by governments. The Public Governance Committee has been appointed to monitor the implementation of the recommendations and "report thereon to the Council no later than three years following its adoption and regularly thereafter, in consultation with other relevant OECD Committees, including the Investment Committee." The OECD has no power to enforce implementation or sanction non-compliant countries.

2.4. World Bank Group

2.4.1. World Bank and IMF debt sustainability framework for LICs

The Debt Sustainability Framework (DSF) for LICs was introduced in 2005 and is “designed to guide the borrowing decisions of LICs in a way that matches their financing needs with their current and prospective repayment ability, taking into account each country’s circumstances.”⁶⁰ The IMF and World Bank reviewed the DSF in 2012, and are currently conducting a further review.

2.4.1.1. Issues covered

The DSF is a formal framework for conducting public (both external and domestic) and external (public and private sector combined) debt sustainability analyses (DSAs) on a regular basis. The DSAs consist of:

- “an analysis of a country’s projected debt burden over the next 20 years and its vulnerability to external and policy shocks—baseline and stress tests are calculated;
- an assessment of the risk of external debt distress in that time, based on indicative debt burden thresholds that depend on the quality of the country’s policies and institutions; and
- recommendations for a borrowing (and lending) strategy that limits the risk of debt distress.”⁶¹

Governments are subsequently classified as having a low, moderate or high risk of debt distress or they are already in debt distress. This categorisation is based on two factors. Firstly, the ratio of debt to (i) exports, (ii) GDP and (iii) government revenue. This is therefore a measure of the financial ability to pay, and does not take into account the human rights or other impacts that may arise when debt service is prioritised over other expenditures. Secondly, the quality of institutions, as measured by the World Bank’s Country Policy and Institutional Assessment (CPIA) index. This index has been criticised for creating a composite measure out of disparate indicators, and for including controversial policy prescriptions to evaluate certain indicators, particularly for a bias towards trade liberalisation.⁶²

The scope of the DSF is limited for various reasons. The DSAs offer limited guidance on whether a government is in need of debt cancellation, and do not take into account contingent liabilities and hidden debts, such as possible excessive payments arising from PPPs.

2.4.1.2. Actors

The DSF impacts the lending decisions of different institutions, including the World Bank, IMF, African Development Bank (AfDB), Asian Development Bank (ADB), International Development Bank (IDB), and OECD governments, and the borrowing decisions of LICs and some low-middle income countries and middle-income countries. Their decisions are guided by the DSAs to different degrees:⁶³

- The World Bank, AfDB and ADB give all loans to low-risk countries, a mix of loans and grants to moderate risk countries and all grants to high-risk countries.
- The IMF uses the DSAs to guide its limits on borrowing for countries and the design of its programmes.
- The IDB uses DSAs to assess how concessional its lending is to the five countries in the region with DSAs.
- OECD governments are not meant to give non-concessional loans to countries with a moderate or high risk of debt distress. However, it often remains unclear if governments stick to the DSA recommendations.
- Although no such rules apply to private sector lenders, the risk ratings are expected to influence their lending behaviour interest rates.

2.4.1.3. Implementation mechanisms

The DSAs are being developed by the World Bank and IMF, which are themselves creditor institutions that are dominated by high-income countries. The adoption of these DSAs is mandatory, but the implementation of the recommendations in them is not in most cases. In practice, however, the World Bank, IMF and other multilateral development banks follow the classification of the DSAs closely when lending to, for example, countries that have been identified as high-risk. Borrowing countries, in turn, have a strong incentive to be classified favourably if they want to attract grants and loans.

2.4.2. Equator Principles

The Equator Principles were developed by private banks in response to a series of “safeguard policies” or “performance standards” adopted by multilateral institutions – such as the World Bank and the International Finance Corporation (IFC). The principles are based on the IFC’s Performance Standards on Environmental and Social Sustainability (see 2.4.3.) and serve as a “risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects”. They are “primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making.”⁶⁴

2.4.2.1. Issues covered⁶⁵

The principles are designed to help clients avoid, mitigate and manage environmental and social risks and impacts in relation to project-level activities. There are 10 Equator Principles, covering the following areas:

- 1. Review and Categorisation:** Categorisation of project proposals on the basis of the magnitude of their potential environmental and social risks and impacts, based on the IFC's categorisation process. These categories range from A (potentially significant risks or impacts) to C (minimal or no risks or impacts). This categorisation is done internally, raising an obvious conflict of interest as lower categorisation reduces the compliance costs for the institution.
- 2. Environmental and Social Assessment:** Category A and B projects require clients to conduct an assessment of relevant environmental and social risks and impacts of the proposed projects. Risks are allowed to be minimised, mitigated, or even offset, which means that the project can still go ahead even if social or environmental impacts are severe, so long as they are offset.
- 3. Environmental and Social Standards:** For countries that are deemed to have robust environmental and social governance, legislation systems and institutional capacity, clients are expected to do no more than abide by host country laws and regulations. For other countries, they have to abide by the IFC's Performance Standards (see section 2.4.3) and the World Bank Group Environmental, Health and Safety Guidelines.⁶⁶
- 4. Environmental and Social Management System (ESMS) and Equator Principles Action Plan:** Developed by the client to address issues raised in the assessment process and incorporate actions required to comply with the applicable standards.
- 5. Stakeholder Engagement:** This principle only applies to category A and B projects. If the project has "potentially significantly adverse impacts on Affected Communities" it requires an "informed consultation and participation process" with documentation in the local language. Again, there is significant leeway for the client to influence the extent of this consultation, as most requirements are "commensurate with the projects risks and impacts". For projects affecting Indigenous Peoples, this leeway may be particularly important, as "a process of Informed Consultation and Participation" is all that is generally required, though this changes to Free, Prior and Informed Consent for "projects with adverse impacts."
- 6. Grievance Mechanism:** Required to be set up by the client for Category A and B projects "to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate, readily accessible, at no cost, and without retribution to the party that originated the issue or concern."
- 7. Independent Review:** This review – by an "Independent Environmental and Social Consultant, not directly associated with the client" – applies to reviewing only the assessment documentation, such as the ESMS, and only to Category A projects, though Category B projects can be included "as appropriate."
- 8. Covenants:** This section is intended to ensure that the Principles are covenanted so that they form part of the formal debt agreement between the financing institution and the client.
- 9. Independent Monitoring and Reporting:** For Category A projects (and Category B "as appropriate") the financing institution will hire (or require the client to hire) an external consultant to "verify its monitoring information." Independent monitoring and evaluation is needed to ensure compliance throughout the project lifecycle.
- 10. Reporting and Transparency:** These are very limited, covering only Category A (and Category B as appropriate) and only requiring the client to post online a "summary of the Environmental and Social Impact Assessment" and to report on greenhouse gas emissions. The financing institution is required to report high-level data on numbers of projects, sectors covered and so on, and on "its implementation of the Equator Principles." There are no requirements to automatically disclose documents with a limited regime of exceptions.

2.4.2.2. Actors

The Equator Principles are adopted by financial industry actors, and apply to their activities: "globally and to all industry sectors." However, this does not mean they apply to all their activities, just to four financial products: project finance advisory services (where project capital costs are over \$10million), project finance (where project capital costs are over \$10million), project-related corporate loans (of over \$100 million) and bridge loans (that bridge the gap until the adoption of one of the other three products).

As of August 2016, 83 financial institutions in 36 countries had adopted the principles.⁶⁷ According to the Equator Principles Association Secretariat,⁶⁸ this covers over 70 percent of international project finance debt in emerging markets. However, project finance is only one aspect of the work of these financial institutions. For example, "Project-Related Corporate Loans exclude other financial instruments that do not finance an underlying Project, such as Asset Finance, acquisition finance, hedging, leasing, letters of credit, general corporate purposes loans, and general working capital expenditures loans used to maintain a company's operations."

The principles also apply to recipients of the project financing, as signatories say that, "We will not provide Project Finance or Project-Related Corporate Loans to Projects where the client will not, or is unable to, comply with the Equator Principles."

A selected group of member financial institutions take care of the management, administration and development of the principles. They form the association steering committee and work on behalf of the member financial institutions. The committee currently consists of 12 member financial institutions, most of them large banks that have been subject to controversy since the financial crisis. They include, for example, Barclays, Citigroup, and J.P. Morgan.⁶⁹ Finally, it is worth noting that also some multilateral development banks such as the European Bank for Reconstruction and Development, as well as export credit agencies are basing themselves on similar standards as the Equator Principles.⁷⁰

2.4.2.3. Implementation mechanisms

Adoption of the equator principles is voluntary and there are no mechanisms in place to sanction member financial institutions that are non-compliant. In spite of this, the principles state that once adoption has been made "the adopting entity must take all appropriate steps to implement and comply with the principles."⁷¹ This means implementing the principles in their internal environmental and social policies, procedures and standards for financing projects and not providing project finance or project-related corporate loans to projects where the client will not, or is unable to, comply with the principles.

Financial institutions are also encouraged to adopt the principles through their group holding company or any other group entity as this allows for a broader commitment to the principles across their relevant business functions and operating subsidiaries.⁷²

2.4.3. IFC Performance Standards

The IFC's Environmental and Social Performance Standards are part of the IFC's Sustainability Framework, which also comprises an Access to Information Policy. The Performance Standards describe the IFC's commitments, roles and responsibilities related to environmental and social sustainability and provide guidance for clients on how to identify, avoid, mitigate and manage social and environmental risks and impacts. The standards were first created in 2006 and revised in 2012, following a multi-year consultation process.

2.4.3.1. Issues covered

There are eight performance standards, which should be met by clients throughout the life of an investment:

1. Assessment and Management of Environmental and Social Risks and Impacts
2. Labour and Working Conditions
3. Resource Efficiency and Pollution Prevention
4. Community Health, Safety, and Security
5. Land Acquisition and Involuntary Resettlement
6. Biodiversity Conservation and Sustainable Management of Living Natural Resources
7. Indigenous Peoples
8. Cultural Heritage

The latest version includes some key changes, including the categorisation of financial intermediary projects according to risk; a requirement for free prior and informed consent from Indigenous Peoples in certain situations; the addition of protection for migrant workers; strengthened transparency on greenhouse gas emissions; the disclosure of extractives project contracts; and the promise of more project-level information.

Key CSO criticisms of the Standards centre on the lack of a standard on human rights, and a lack of strong language in several areas, including environmental standards, labour rights, and Indigenous Peoples' rights.⁷³

2.4.3.2. Actors

The Performance Standards apply to all of the IFC's direct investments and investments through financial intermediaries. The IFC also reports that "32 export credit agencies of the OECD countries benchmark private sector projects against the IFC's Performance Standards."⁷⁴ The Equator Principles' secretariat describes the standards as "globally recognized as a benchmark for environmental and social risk management in the private sector."⁷⁵

Adoption of the performance standards is mandatory for all client companies in order to receive IFC support. The client has the responsibility to establish an overarching policy defining the environmental and social objectives and principles that guide the project. However, several reports have shown that in practice the IFC often fails to implement its performance standards, particularly in the case of investments through financial intermediaries. A 2012 audit report of the Compliance Advisor/Ombudsman (CAO) – the IFC’s arm’s-length watchdog – argued that the IFC “knows very little about potential environmental or social impacts of its financial markets lending.”⁷⁶ This has also been evidenced by CSOs through several case studies.⁷⁷

2.4.3.3. Implementation mechanisms

The IFC has several mechanisms in place to ensure that clients comply with its performance standards throughout the project lifecycle. Projects can be delayed if they have not yet been approved by the Board, or the IFC may negotiate the problem with the client and decide on an “action plan” to ensure consistency. It will then supervise the implementation of the action plan. If the client continues to fail in its compliance with the standards, the IFC can bring in a third party arbitrator to intervene or withhold future disbursements of the loan or require the company to pay back the loan ahead of schedule. The CAO has no formal power to demand actions from the clients or the IFC itself, nor can it enforce sanctions.

2.5. Other actors

2.5.1. Extractive Industries Transparency Initiative (EITI)⁷⁸

The EITI was launched in 2002 to improve governance in resource-rich countries by promoting public reporting of revenue flows to governments from oil, gas and mining companies. The EITI is based on a principle of partnership between governments, the private sector and civil society organisations. The initiative requires companies to publish their payments to governments and governments to disclose what they receive.

2.5.1.1. Issues covered

The EITI covers countries and companies in the oil, gas and mining sectors, but countries may expand the scope to include other sectors such as forestry or fisheries. Twelve basic principles were agreed in 2003 and are a mix of the aspirational (“We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business”) and the pragmatic (“We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.”)

Implementing countries must meet eight mandatory requirements:

1. “Effective multi-stakeholder oversight”, which requires that “Civil society must be fully, actively and effectively engaged in the EITI process.”
2. “A transparent legal framework and award of extractive industry rights”. This requires the disclosure of the “legal framework and fiscal regime governing the extractive industries” as well as information about licences and contracts. However, publication of contracts, and a public register of beneficial owners are only recommended, not required.
3. “Disclosures of information related to exploration and production.”
4. “A comprehensive reconciliation of company payments and government revenues from the extractive industries.” This includes information on, inter alia, profit taxes, royalties, dividends, bonuses, and licence fees as well as sale of the state’s share of production, infrastructure, services and goods provisions, social expenditures by companies, and revenues collected from the transportation of oil, gas and minerals.
5. “Revenue allocations [including] distribution of revenues; subnational transfers; and revenue management and expenditures.”

6. "Disclosure of information on social expenditures by companies; [State-owned Enterprise] quasi-fiscal expenditures; and an overview of the contribution of the extractive sector to the economy."
7. "Outcomes and Impact" including ensuring that "the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate."
8. "Compliance and deadlines for implementing countries."

They agree to produce comprehensive EITI reports on an annual basis.

It is worth noting that most civil society organisations, including Eurodad, are currently moving beyond some of the EITI requirements, specifically in the area of country by country reporting. They are campaigning for all companies to have to publicly report information about their sales, assets, employees, profits and tax payments in each country in which they operate. Today the EITI does not require companies to put this information in the public domain. Public disclosure of country by country information is important, as it would allow stakeholders to assess to what extent aggressive tax planning strategies seem to be in place and whether profit shifting is happening.

2.5.1.2. Actors

The number of countries that are implementing the EITI standards is growing. However, of the 51 implementing countries, only 31 are compliant with the EITI requirements and only 13 countries have published an EITI report for the year 2014. Some significant oil producers, including Algeria, Libya and Angola, have not joined to date.⁷⁹

Furthermore, "a national multi-stakeholder group (government, industry and civil society) decides how the EITI process in their country should work."⁸⁰ Countries therefore decide what to include within the scope of the extractive industries, which companies to include or exclude from EITI reports, and whether to aggregate or disaggregate data. Hence, despite the existence of the multi-stakeholder group, EITI's implementation will inevitably depend on the political will of governments in resource-rich countries, and also the willingness of industry to support a broad implementation. Some countries have opted for a basic implementation of EITI standards, while others have chosen an extended implementation.⁸¹ This has led to uneven report quality. According to Transparency International, "countries that have broadened the scope and innovated in the implementation have achieved better results and managed to foster reforms in the sector."⁸²

2.5.1.3. Implementation mechanisms

Implementing countries have to meet four sign-up steps to become an EITI candidate. The EITI Board has the responsibility to admit an EITI candidate and establish deadlines for publishing the first EITI report and undertaking evaluation. The Board consists of 20 members representing implementing countries, supporting countries, civil society organisations, industry and investment companies. The first EITI report must be published "within 18 months from the date that the country was admitted as an EITI Candidate" and "EITI Candidate countries are required to commence Validation within two and a half years of becoming an EITI Candidate."⁸³ Through this validation, a country must demonstrate compliance with the EITI requirements in order to achieve actual "compliant" status. However, the level of actual compliance so far is limited as a result of the EITI's voluntary nature.

2.5.2. Financial Action Task Force (FATF) recommendations on combating money laundering and terrorist financing (AML/CFT)⁸⁴

The FATF is a global anti-money laundering body established in 1989 by the G7 and mandated to "set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system". The latest version of the FATF standards was produced in 2003, but a new methodology was produced in 2013.

2.5.2.1. Issues covered

The standards set out 40 recommendations for countries covering, for example, identifying risks, developing policies, applying preventive measures for the financial sector, establishing powers and responsibilities for different authorities and enhancing transparency. The standards are grouped into the seven areas designed to:

1. "Identify the risks, and develop policies and domestic coordination: this allows countries to adapt the policies according to their assessment of the level of risk;
2. Pursue money laundering;
3. [Pursue] terrorist financing and the financing of proliferation;
4. Apply preventive measures for the financial sector and other designated sectors;

5. Establish powers and responsibilities for the competent authorities (e.g., investigative, law enforcement and supervisory authorities) and other institutional measures;
6. Enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and
7. Facilitate international cooperation.”

Many of these recommendations cover how governments should put in place anti-money laundering policies, which go beyond the scope of this briefing. However, some areas are worth noting.

Firstly, some CSOs have been heavily critical of an FATF recommendation (number 8) that affects NGOs. A report from the Transnational Institute and Statewatch said:

“FATF’s interpretation, guidance, best practice and the evaluation process ...strongly encourage states to introduce government licensing or registration procedures for non-profit organisations, ensure transparency and accountability of NPOs, introduce financial reporting systems, exchange this data with law enforcement agencies, and impose sanctions for non-compliance.”⁸⁵

It concludes:

“While this was obviously not the intention ... [FATF’s] evaluation system has endorsed some of the most restrictive [non-profit organisation] regulatory regimes in the world, and strongly encouraged some already repressive governments to introduce new rules likely to restrict the political space in which NGOs and civil society actors operate.”

In addition, Oxfam has raised concerns about how too strict anti-money laundering rules can hinder the transfer of remittances or in transferring funds for projects in war-torn countries.⁸⁶ This appears to be more linked to implementation of rules rather than the FATF standards themselves.

While the standards require financial institutions to identify customers and the beneficial owners, this is not required to be made public – as called for by Eurodad and others – but only to ensure it can “be obtained or accessed in a timely fashion by competent authorities.”

It is worth noting that in February 2012, FATF explicitly incorporated tax crimes related to direct taxes and indirect taxes as a predicate offence in the global anti-money laundering standards.⁸⁷ However, the standards do not include recommendations specifically related to transfer pricing or automatic exchange of information.

2.5.2.2. Actors

The FATF has a ministerial mandate to establish international standards for combating money laundering and terrorist financing. Over 180 jurisdictions have joined the FATF or an FATF-style regional body (FSRB). They committed to implementing the FATF standards and having their anti-money laundering (AML)/counter-terrorist financing (CFT) systems assessed. Also several DFIs, including the European Bank for Reconstruction and Development (EBRD) and Norfund, have integrated the FATF standards in their tax haven policies.⁸⁸

Jurisdictions must actively make sure that companies and professionals comply with the standards. However, as of 19 February 2016, FATF identified 11 jurisdictions with strategic deficiencies in transposing the standards into national law. These include countries at war such as Afghanistan, Iraq, Syria and Yemen, but also countries such as Bosnia and Herzegovina have transposition deficiencies.⁸⁹

2.5.2.3. Implementation mechanisms

Countries around the world are required to transpose the standards into national law and cooperate with their neighbours to enforce them. Implementation of the standards is assessed through mutual evaluation processes and the assessment processes of the IMF and the World Bank. To achieve implementation of its recommendations, the FATF uses a global network of FSRBs. According to FATF, these FSRBs “have an essential role in promoting the effective implementation of the FATF Recommendations by their membership and in providing expertise and input in FATF policy-making”. The FATF also uses its mutual evaluations to pressure countries to put the standards into law. The FATF develops action plans for jurisdictions with strategic deficiencies.

Overall, despite the fact that the FATF cannot sanction non-compliant jurisdictions, most member countries have transposed the standards into national legislation. Yet this does not necessarily mean that national laws are being put into practice. Specific country reports should give an idea of how well governments are doing to stop illicit financial flows. In 2013, FATF introduced a new methodology that looks at the practical effectiveness of a country’s frameworks, and not just whether laws are in place. However, Transparency International has suggested that these reports need significant improvement. According to the NGO, the first report that came out since the introduction of the new methodology, which focused on Spain, was “based on limited evidence, not thoroughly sourced, and its conclusions are largely unsupported by the evidence presented.”⁹⁰

Annex 1: Single institution standards or those in development – key examples

Not covered				
Standard	Year of latest revision	Voluntary/mandatory	Aim ⁹¹	Private sector/official/CSO initiative
European Investment Bank's Environmental and Social Handbook	2010, updated in 2014	Mandatory for clients	Advise external actors on how to operationalise the EIB's environmental and social policies in projects	Official
G20 Finance Study Group	Under development	Voluntary	Identify institutional and market barriers to green finance and analyse ways in which the financial system can mobilise more private green investment	Official
Global Standard-Setting Bodies and Financial Inclusion for the Poor	Under development	Voluntary	Raise awareness and inform standard-setting bodies on how to integrate financial inclusion into standards and guidance that can be applied at country-level for benefit of the poor	Official
World Bank social and environmental safeguards	Under review since 2012	Mandatory for borrowing countries and related projects	Identify, avoid and minimise harmful impact of World Bank projects on people and environment	Official



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5. As stated by standard-setting body.
6. These refer to investment managers, asset owners and service providers.
7. Only applicable if the public development bank is active in multiple countries and can therefore be considered as a state-owned multinational.
8. Only applicable if the Development Finance Institution investee company is active in multiple countries.
9. Only applicable if the private bank is active in multiple countries.
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Eurodad

The European Network on Debt and Development (Eurodad) is a network of 47 civil society organisations (CSOs) from 20 European countries, which works for transformative yet specific changes to global and European policies, institutions, rules and structures to ensure a democratically controlled, environmentally sustainable financial and economic system that works to eradicate poverty and ensure human rights for all.

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