

Issues for Phase 3 Consultations

CODE Introduction

On July 1, 2015, the Committee on Development Effectiveness (CODE) discussed the second draft of the *Review and Update of the World Bank's Safeguard Policies - Proposed Environment and Social Framework (Second Draft)*. The Committee broadly agreed on the structure and many areas of the proposed Environmental and Social Framework (ESF). However it was apparent further discussion was required on various aspects—notably the Vision statement, some Standards, and sensitivity/ambition of language. Equally, further clarity was needed on implementability and potential impact on borrowers. The Committee agreed it was important to continue forward-looking efforts to ensure the ESF is balanced, avoids excessive implementation burdens and costs on borrowers, strengthens client capacity, promotes sustainable and inclusive development, and contributes to the institution's twin goals.

The Committee agreed that Management should commence the third phase of consultations on the revised second draft. The focus of the consultations should be on gathering feedback and on the implementability of the ESF in borrowing countries, and the consultation package should include the following indicative, but not exhaustive, list of issues to be further explored during consultations.

The Committee looks forward to continued engagement on the ESF.

Issues for Phase 3 Consultations

At the meeting on July 1, 2015, the Committee on Development Effectiveness (CODE) endorsed the next round of consultations on the second draft Environmental and Social Framework (ESF). Executive Directors requested World Bank Management to discuss a number of issues during the Phase 3 consultations. The list below was developed following the CODE meeting, and sets out specific issues which Executive Directors have requested Management to include in the forthcoming consultation meetings, especially those to be conducted with governments. The consultations will focus on gathering feedback from borrowing countries and other stakeholders on these and other issues as well as on the resources and implementation of the ESF. This list is indicative of the issues to be discussed, but is not exhaustive. Management will closely work with Executive Directors in organizing these consultations, and keep them informed of the progress of the consultations. Following the close of consultations, Management will prepare a report on the issues raised during consultations for Executive Directors' review.

ESF	Issue	Items
Vision	Human Rights	<ul style="list-style-type: none"> • Approach to human rights in the ESF
ESP/ ESS1	Non-discrimination and vulnerable groups	<ul style="list-style-type: none"> • Explicit listing of specific vulnerable groups by type/name (age, gender, ethnicity, religion, physical, mental or other disability, social, civic or health status, sexual orientation, gender identity, economic disadvantages or indigenous status, and/or dependence on unique natural resources) • Specific aspects of the non-discrimination principle in complex social and political contexts, including where recognition of certain groups is not in accordance with national law
	Use of Borrower's Environmental and Social Framework	<ul style="list-style-type: none"> • Role of Borrower frameworks in the management and assessment of environmental and social (E&S) risks and impacts where these will allow projects to achieve objectives materially consistent with Environmental and Social Standards (ESSs) • Approach for making decision on the use of Borrower frameworks, including the methodology for assessing where frameworks will allow projects to achieve objectives materially consistent with the ESSs, and the exercise of Bank discretion • Role of Borrower frameworks in high and substantial risk projects
	Co-financing/ common approach	<ul style="list-style-type: none"> • Arrangements on E&S standards in co-financing situations where the co-financier's standards are different from those of the Bank
	Adaptive risk management	<ul style="list-style-type: none"> • Approach to monitoring E&S compliance and changes to the project during implementation
	Risk classification	<ul style="list-style-type: none"> • Approach to determining and reviewing the risk level of a project
ESS1	Assessment and management of environmental and social risks and impacts	<ul style="list-style-type: none"> • Assessment and nature of cumulative and indirect impacts to be taken into account • Treatment of cumulative and indirect impacts when identified in the assessment of the project • Establishing project boundaries and the applicability of the ESSs to Associated Facilities, contractors, primary suppliers, FI subprojects and directly funded sub-projects • Circumstances under which the Bank will determine whether the Borrower will be required to retain independent third party specialists

	Environmental and Social Commitment Plan (ESCP)	<ul style="list-style-type: none"> • Legal standing of the ESCP and implications of changes to the ESCP as part of the legal agreement
ESS2	Labor and working conditions	<ul style="list-style-type: none"> • Definition and necessity of and requirements for managing labor employed by certain third parties (brokers, agents and intermediaries) • Application and implementation impacts of certain labor requirements to contractors, community and voluntary labor and primary suppliers • Constraints in making grievance mechanisms available to all project workers • Referencing national law in the objective of supporting freedom of association and collective bargaining • Operationalization of an alternative mechanism relating to freedom of association and collective bargaining where national law does not recognize such rights • Issues in operationalizing the Occupational Health and Safety (OHS) provisions/standards
ESS3	Climate change and GHG emissions	<ul style="list-style-type: none"> • The relation between provisions on climate change in the ESF and broader climate change commitments, specifically UNFCCC • Proposed approaches to measuring and monitoring greenhouse gas (GHG) emissions in Bank projects and implications thereof, in line with the proposed standard, including determining scope, threshold, duration, frequency and economic and financial feasibility of such estimation and monitoring • Implications required for the Borrower of estimating and reducing GHG emissions for Bank projects, in line with the proposed standard
ESS5	Land acquisition and involuntary resettlement	<ul style="list-style-type: none"> • Treatment and rights of informal occupants and approach to forced evictions in situations unrelated to land acquisitions • Interpretation of the concept of resettlement as a “development opportunity” in different project circumstances
ESS6	Biodiversity	<ul style="list-style-type: none"> • Operationalization of the provisions on primary suppliers and ecosystem services, especially in situation with low capacity • Role of national law with regard to protecting and conserving natural and critical habitats • Criteria for biodiversity offsets, including consideration of project benefits • Definition and application of net gains for biodiversity
ESS7	Indigenous Peoples	<ul style="list-style-type: none"> • Implementation of the Indigenous Peoples standard in complex political and cultural contexts • Implementation of ESS7 in countries where the constitution does not acknowledge Indigenous Peoples or only recognizes certain groups as indigenous • Possible approaches to reflect alternative terminologies used in different countries to describe Indigenous Peoples • Circumstances (e.g. criteria and timing) in which a waiver may be considered and the information to be provided to the Board to inform its decision • Criteria for establishing and implementation of Free, Prior and Informed Consent (FPIC)

		<ul style="list-style-type: none"> • Comparison of proposed FPIC with existing requirements on consultation • Application of FPIC to impacts on Indigenous Peoples' cultural heritage
ESS8	Cultural Heritage	<ul style="list-style-type: none"> • Treatment of intangible cultural heritage • Application of intangible cultural heritage when the project intends to commercialize such heritage • Application of cultural heritage requirements when cultural heritage has not been legally protected or previously identified or disturbed
ESS9	Financial Intermediaries	<ul style="list-style-type: none"> • Application of standard to FI subprojects and resource implications depending on risk • Harmonization of approach with IFC and Equator Banks
ESS10	Stakeholder engagement	<ul style="list-style-type: none"> • Definition and identification of project stakeholders and nature of engagement • Role of borrowing countries or implementing agencies in identifying project stakeholders
General	EHSG and GIIP	<ul style="list-style-type: none"> • Application of the Environmental, Health and Safety Guidelines (EHSGs) and Good International Industry Practice (GIIP), especially when different to national law or where the Borrower has technical or financial constraints and/or in view of project specific circumstances
	Feasibility and resources for implementation	<ul style="list-style-type: none"> • Implementation and resource implications for Borrowers, taking into account factors such as the expanded scope of the proposed ESF (e.g., labor standard), different Borrower capacities and adaptive management approach • Mitigation of additional burden and cost and options for improving implementation efficiency while maintaining effectiveness
	Client capacity building and implementation support	<ul style="list-style-type: none"> • Funding for client capacity building • Approaches and areas of focus • Approach to implementing the ESF in situations with capacity constraints, e.g., FCS, small states and emergency situations
	Disclosure	<ul style="list-style-type: none"> • Timing of the preparation and disclosure of specific environmental and social impact assessment documents (related to ESS1 and ESS10)
	Implementation of the ESF	<ul style="list-style-type: none"> • Bank internal capacity building, resourcing, and behavioral change in order to successfully implement the ESF • Ways of reaching mutual understanding between Borrower and Bank on issues of difficult interpretation