

Germany's accession to the Asian Infrastructure Investment Bank: to guarantee modern environmental and social standards and seize the opportunity for greater transparency and accountability!

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Germany's Accession to the Asian Infrastructure Investment Bank

To guarantee modern environmental and social standards and seize the opportunity for greater transparency and accountability!

Germany will ratify its accession agreement to the Asian Infrastructure Investment Bank (AIIB) before the end of the year. The candidate countries currently negotiate in multiple rounds key documents such as environmental and social standards as well as the information and disclosure policy. The first proposal for the environmental and social standards of the AIIB, circulated in September 2015, as well as the consultation practice so far do not meet the human rights sophistication required of a multilateral development and investment bank; the information and disclosure policy has yet to be written. The parliamentary decision regarding AIIB accession must, therefore, be pushed to a later date. Germany's Bundestag should seize the opportunity of AIIB accession to create transparency and reporting requirements for Germany's participation in the framework of multilateral organizations and to anchor the necessary procedures and instruments into national law for the first time.

Background

On March 17, 2015, Germany's federal finance ministry (BMF) announced Germany's intention to become a founding member of the AIIB; on September 2, 2015, the federal cabinet approved legislation to this end. The largest AIIB partner is China, with a share of around 30 percent; Germany plans to underwrite just a 4.5 percent share. This is equal to €4.5 billion total cash deposits and reserves, an amount making Germany the largest partner outside of the region. Germany's Bundestag is set to finalize the legislation in an expedited process before the 2015 Christmas holidays.

1. What's the Hurry?

The BMF explained their haste at the [legislation's first reading](#) on October 1, 2015, stating that it was important to be a fully operational member by the bank's starting date on January 1, 2016, as any "stragglers" after this point wouldn't be taken seriously. Notwithstanding this assessment, the accession candidates are already participating in regular negotiations over AIIB's guiding principles. Germany's hurried AIIB accession schedule is unlike most other in Europe.

Germany should use its influence as the largest non-regional shareholder and only accede formally once the AIIB has presented and adequately formulated environmental and social standards as well as an information and disclosure policy.

2. Why Do Infrastructure Measures Produce Negative Effects?

According to the BMF's parliamentary report, the AIIB seeks "the highest environmental and social standards, to support the poorest in the world." Additionally, Germany's accession would be, according to BMF, a step toward Germany assuming responsibility for its global obligations and contributing to reducing the number of people seeking refuge abroad: "... so that people decide to remain in their homelands and do not leave for other places, thereby creating new problems for us. If we can contribute to solving problems abroad, where these people call home, then we are helping them and helping ourselves."

Infrastructure investments are necessary, and development banks can contribute to better access to energy sources, basic utilities like sewer and water

systems, health services, or education, thereby laying the groundwork for greater economic activity. The prerequisites for this are robust environmental and social standards set by the banks when distributing funds, in order to prevent or minimize negative consequences of their investments on the people or environment in their project areas. These standards are initially internal compliance procedures of each bank. They become part of the financing agreement between the bank and the borrowing country, requiring the borrowing country to honor them when implementing the financed projects. Thus, environmental and social standards can have a protective effect across the region, ideally resulting in a unified level of standards across national borders.

In the parliamentary debate following the first reading, some speakers voiced criticism of the "clumsiness" and lengthiness of these procedures in existing investment and development banks. However, the experiences of other banks with a similar portfolio and mission as the AIIB reveal that infrastructure projects do not help the poor by default, but rather in many cases contribute to increased poverty and migration. The causes are often

- inadequate inquiry into the environmental or social consequences of the infrastructure project prior to implementation, resulting in construction sites with inhumane working conditions, the occurrence of human rights abuses such as forced eviction, or encroachment on natural resources through environmental damage;
- poor bank oversight of project implementation, such that those affected by the negative outcomes – for example, eviction – of a specific project are not properly compensated;
- insufficient consultation with those affected by the infrastructure project, such that it has no or very few positive effects for those most heavily afflicted by poverty and marginalization;
- and finally, no or few accessible avenues for voicing grievances.

Unintended effects, such as the increase rather than decrease in poverty levels, often appear

- if banks fail to stipulate and monitor compliance with their own environmental and social standards, instead relying on the borrower country for oversight and implementation to whatever extent possible (use of country systems);

- or if they ignore the fact that a country's environmental and social standards are simply too low, or if laws which appear adequate on paper are inadequately enforced.

As a result: Even if an ex ante assessment and consultations should delay the start date of a project, caution before and during implementation pays for itself over the long-term – there are both fewer conflicts in the project region and less environmental damage. This was also the [conclusion of a 2010 report by the World Bank's independent evaluation department](#) with regard to the World Bank's applicable environmental and social standards.

3. Where Do Human Rights Fit In?

Human rights treaties and the guidelines based on them formulate minimums for the implementation of state development projects. This includes access to basic services without discrimination, informed participation in the planning of development projects, recognition of informal land ownership and land usage rights, appropriate labor conditions during the implementation of the infrastructure project, and the establishment of grievance procedures.

More than 97 percent of AIIB's shares are currently being held by countries that have ratified at least five of the [ten core international human rights treaties](#). Ratification of the [International Labor Organization's \(ILO\) core labor standards](#) is similarly high. Member states signatories to the International Covenant on Social, Economic, and Cultural Rights are bound to these human rights responsibilities also in multilateral activities, including negotiations on their own territory, negotiations between countries, as well as participation in international organizations like development banks.

4. What Are the Minimum Requirements for Development Banks?

Minimum requirements include robust environmental and social standards which cover the fundamental risks of infrastructure programs and are in harmony with international human rights treaties and core labor standards. The bank itself must reserve the right to decide whether its environmental and social standards and oversight procedures are met or exceed those of the borrower country. In ex ante assessments, those persons affected by the planned project must be part

of the assessment process in order to identify possible negative outcomes in time and to search for alternatives. Planning and implementation should also be monitored by third parties, such as civil society groups. Such third parties need not only the freedom and the opportunity to inform themselves and to publish their findings without hindrance or fear, but also an institution that will react to their concerns. To this end, a bank requires accessible and effective grievance mechanisms. Environmental and social standards must be complimented by an information and disclosure policy: Only when information about if and how the bank is involved are known can third parties effectively request what they need in order to examine the financing of the development project in question.

5. Estimations of the Preliminary Draft and Consultation Proceedings

Early September 2015 – two days before the first consultation meeting – the AIIB officially published the [first draft of its environmental and social framework](#). It is based on the standards of both the World Bank and the Asian Development Bank.

The AIIB proposal for an environmental and social framework is composed of:

- an environmental and social policy;
- three standards for project assessment, involuntary resettlement, and indigenous peoples;
- as well as the environmental and social procedure.

The information and disclosure policy is still missing. Without it, all environmental and social standards are virtually pointless: Only when project financing is known can people living in the project region assess whether or not they could be affected; only when the results of the ex ante assessment are published can one conclude which measures must be undertaken by the bank and the borrower countries in order to avoid negative human rights consequences or to provide appropriate compensation for losses.

Further shortcomings of the draft include:

- inadequate reference to legally binding international human rights responsibilities and the ILO core labor standards;
- the lack of exclusion for financing of projects in breach of these responsibilities;
- the lack of of a standard on labor and working

conditions based on the ILO core labor standards, which among other things must also be applied to temporary workers and subcontracted labor;

- the precedence of national law in regulating labor conditions;
- often unspecific formulations – for example, when applying national methods for predicting environmental and social costs, requiring that these “can react appropriately to environmental and social risks” in such a way that these “are largely in accordance with AIIB standards”;
- the altogether incomplete description of methods and processes for addressing grievances;
- and the lack of detail in the environmental and social procedure, including the failure to name who in the bank will be concerned with verification of and compliance with the bank’s standards.

The current consultation procedure also requires changes:

- the environmental and social standards proposal is only available in English; translated versions, at the very least into significant languages of the Asian-Pacific region like Bahasa Indonesia or Vietnamese, are in order;
- thus far, consultations have been held only online and in English – conditions which may be accessible enough for interested parties from the northern hemisphere, but which do not consider the needs of the intended target area.

6. Recommendations for the Bundestag and Germany's Federal Government

Reporting about and parliamentary control of Germany’s participation in multilateral institutions is often limited to the ratification of accession laws and budgetary approval; later ad hoc or periodic reports to the Bundestag mostly take place behind closed doors to the responsible committees. Annual executive reports and singular internal position papers may be the only publications that appear more widely. Thus, a significant portion of Germany’s multilateral policy avoids public oversight to a large degree. In contrast, countries such as the UK or the Netherlands have called other development banks to public parliamentary hearings and required complete formulation of strategies, including the intended goals of each project, before cooperating further. AIIB accession is an excellent opportunity to improve Germany’s practices.

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Recommendations for the Bundestag:

- Postponement of the legislative process on this matter until environmental and social standards as well as the information and disclosure policy in their final form are in hand;
- Debate of the proposed environmental and social standards as well as the information and disclosure policy in public parliamentary proceedings, with the participation of journalists, experts, and civil society organizations from Germany and the target region, whenever possible;
- Expansion of the AIB accession law, requiring explicit reporting from the German executive branch, especially:
 - formulation and publication of an AIB strategy;
 - at minimum, an annual meeting with German and international civil society actors to discuss their goals and the achievement of said goals;
 - regular public hearings of Germany's executive directors in parliament;
 - regular internet publication of Germany's voting behavior in AIB's board, with regard to financing decisions about projects („publish what you vote for“);
 - parliamentarian visits to AIB and other development and investment bank projects;
- unlimited application of international human rights conventions, „do no harm“ requirements, and the requirement of ex ante assessments for negative human rights impact;
- the reduction of discretionary terms and the formulation of decisive criteria for the use of both administrative discretion and the assignment of responsibilities for the individual steps of verifying and applying environmental and social standards;
- organization of grievance procedures, modeled on [UN Special Representative for Human Rights and Transnational Corporations John Ruggie's human rights treaties-inspired Criteria for Extrajudicial Grievance Mechanisms](#) (legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, dialogue and engagement, continuous learning), including not only procedures for dispute resolution, but also a mechanism for deciding proper application of the standards;
- development of an information and disclosure policy which make transparency the rule and privacy the exception;
- and development of a timeline for a test phase of the initially agreed-upon standards to be concluded with self-reflective consultations and an evaluation, as well as a consultation plan for the bank's continuous activity.

Recommendations for the Federal Government:

In the framework of the current negotiation process on AIB's environmental and social standards as well as the information and disclosure policy, the BMF should strongly support:

- Expansion of the existing standards to include labor conditions integrating the ILO's core labor standards and including both temporary workers and subcontracted labor;

In addition, the BMF should push for:

- consultations in the AIB's target region, which take place with adequate notice, in person and in an unoppressive environment, held in the local languages of the country in question, and open to those potentially affected by the project;
- and the identification of like-minded countries to amplify the weight of these positions within the organization.