

CODE OF RESPONSIBLE FINANCING

Fund for the Promotion of Development (FONPRODE)

Spanish Agency for International Development
Cooperation (AECID)



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Spanish Agency for International Cooperation for Development

Multilateral, Horizontal and Financial Cooperation Directorate

Office of FONPRODE and financial cooperation

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BASIC PREMISES

This Spanish Development Cooperation Code of Responsible Financing for reimbursable financial cooperation of Spain¹ is intended to provide an effective guide for managing *credits, loans, and lines of credit, microfinance activities, acquisition of equity or quasi equity in financial institutions and investment vehicles*, as well as *operations with non-financial multilateral development organizations and international development finance institutions* – only in case these are reimbursable operations². The Code is also intended to serve as a fundamental reference text for selecting the operations to be funded, based on the following basic premises:

- 1) FONPRODE, the Fund for the Promotion of Development for the Promotion of Development, is an **instrument for the use of the Spanish development cooperation system**. Consequently, the operations to be financed must be necessarily consistent with the Spanish development cooperation policy, and be coherent with key planning documents³, in terms of promoting inclusive growth aimed at eradicating poverty, supporting the creation of the social productive networking in developing countries, reducing social inequalities and promoting gender equality and human rights – and thereby promoting sustainable human development in poor countries.
- 2) Compliance with the **Principles of the UN Global Compact**, the **UN Principles for Responsible Investment**, the **ILO Conventions on decent work** and the **OECD Guidelines for Multinational Enterprises**. Consequently, the Spanish Development Cooperation will not finance any action producing an unacceptable risk of contributing to or being complicit in acts or omissions that violate the above principles, including human rights violations, corruption, and social or environmental damage.

¹ Under Article 9 of the International Development Cooperation Act 23/1998 of 7 July 1998, "economic and financial cooperation is expressed through contributions to investment projects aimed at increasing the physical capital of the recipient countries and at projects to help economic sectors". This cooperation can be manifested through diverse instruments, including economic and financial contributions to international bodies, debt relief or forgiveness, and actions of a reimbursable nature. In the latter respect, the FONPRODE Regulation approved by Royal Decree 845/2011, of 17 June 2011, provides for international operations, the granting of credits, loans and lines of credit on concessional terms, aimed at developing the social and productive networking of least developed, low income and middle-income countries, at microfinance activities and at acquiring direct or indirect equity and quasi-equity in financial institutions or financial investment vehicles for the development of the productive networking or for supporting, directly or indirectly, SMEs domiciled in the cooperation beneficiary countries.

² Article 11 of the FONPRODE Regulations states that the Code of Responsible Finance shall be targeted at the operations referred to in Articles 8, 9 and 10 as well as Articles 6 and 7 when reimbursable.

³ Spanish policy for development cooperation is detailed in its Master Plan and Sectoral Strategies, one of which refers to "*Economic Growth and Promotion of the Productive Networking*".

The FONPRODE planning will be published annually, taking into account the limits and percentages set out in the Spanish Development Cooperation Master Plan regarding geographical and sectoral guidelines, especially as regards social services and gender equality.

ACTIONS

The FONPRODE Office will take an active role, exerting its influence as an investor and its rights as owner, in order to engage with funding recipients and ensure compliance with the above-mentioned fundamental premises in the management of its assets. To this end, the FONPRODE Office will endeavour:

- 1) To apply the **Policy on Social and Environmental Sustainability**, the **IFC Performance Standards** and the **World Bank Safeguard Policies**, as basic norms for managing social, environmental and governance performance.
- 2) To apply the Guiding Principles on Business and Human Rights: Establishing the UN **“Protect, Respect and Remedy”** Framework, developed by the UN Secretary-General’s Special Representative on Business and Human Rights, Professor John Ruggie.
- 3) To **exclude** from all possible actions those on the International Finance Corporation (IFC) Exclusion List, as well as those located in jurisdictions listed as non-cooperative tax havens by the OECD; and to prevent investments made from becoming part of actions involving financial or fiscal evasion or avoidance by the end recipients of such investments. Furthermore, to comply with the provisions of Royal Decree 1080/1991, of 5 July 1991, which identifies the countries or territories referred to in Article 2, paragraph 3, item 4, of the Urgent Fiscal Measures Act 17/1991, of 27 May 1991, and Article 62 of the General State Budget Act 31/1990, of 27 December 1990.
- 4) To **exclude** from all possible actions those involving the transfer to private hands of the public ownership of basic social services, including water and sanitation. In the case of operations involving the private provision of these services or the privatization of their management, confirmation will be required that this provision is aimed at enhancing the universality, accessibility and affordability of these services, with the appropriate quality and social acceptance, and characterised by the absence of conflict in the partner country and by the existence of a national regulatory body.
- 5) To **exclude** from consideration as potential beneficiaries any entity acting in contravention of the principles set out in this Code of Responsible Financing, or which have a proven history of such actions.
- 6) To **comply with the 40+9 recommendations** of the Financial Action Task Force (FATF) on money laundering and the financing of terrorism.

And will adopt:

- 1) An approach aimed at fighting poverty and addressing social inequalities, making use for this purpose of the *Practical Guide to Ex Ante Poverty Impact Assessment* developed by the OECD Development Assistance Committee.
- 2) A set of measures to **prevent unsustainable indebtedness**, focused on credits, loans and lines of credit.
- 3) A **management system aimed at development results**, to be approved by the FONPRODE Executive Committee, based on the following elements:
 - a. Additionality of Spanish Development Cooperation
 - b. Social, gender and environmental performance
 - c. Strategic role for Spanish Development Cooperation
 - d. Financial viability
- 4) Guidelines for incorporating **gender mainstreaming** into Spanish Development Cooperation's activities.
- 5) A **unified information procedure** that beneficiaries must follow to show compliance with social and environmental criteria, and with the promotion of human rights, workers' rights and gender equality, and how these contribute to significant development impact results

ACCOUNTABILITY

The Secretary of State for International Cooperation, at the Spanish Ministry of Foreign Affairs and Cooperation, will report on the implementation of this Code to stakeholders in Spanish Development Cooperation policy and to the general public, through the following channels:

- 1) **Annual report** to the Congress of Deputies and the Senate on the operations financed by FONPRODE, as provided for in Article 30 of its Regulations⁴. This Report includes a statement of operations, their aims, the target country, the sectors of intervention and the beneficiary institutions, as well as the contract conditions (including provisions for contract adjudication), the amounts committed and disbursed, the criteria for selection of the instruments utilised, the adjudications finally approved and the assessments made, also stating the percentage of reimbursable Official Development Assistance corresponding to the operations performed in that year. This Report is then forwarded to the Council for Development Cooperation.
- 2) Signing of the **Global Compact** and the **Principles for Responsible Investment** initiative, both promoted by the **United Nations**.

⁴ Royal Decree 845/2011 of 17 June 2011, approving the regulatory development of FONPRODE.

- 3) Annual **Communication on Progress** made in implementing the Global Compact Principles, following the guidelines developed by the **UN Global Reporting Initiative**.
- 4) **Evaluation** of a random sample of the interventions.
- 5) **Claim Mechanism**. Any persons or groups, or their representatives (with a specific mandate to do so), who are directly affected by the actions of FONPRODE, may contact its Office to report (providing documentary evidence) any violation of this Code. All such complaints will be reviewed by the Office and, if appropriate, by the Committee, and the necessary corrective action taken. The FONPRODE Office will include in its Annual Report all documented complaints received and the actions taken in response.
- 6) **Review of the Code of Responsible Financing** by the Cooperation Council. In the first operational implementation phase of FONPRODE, the application of this Code will be monitored annually, seeking to identify possible areas for improvement.

REFERENCE FRAMEWORK

INSTITUTIONAL CONTEXT

REGULATORY FRAMEWORK

International Development Cooperation Act 23/1998, of 7 July 1998

The International Development Cooperation Act 23/1998, of 7 July 1998 (henceforth, IDCA) established a legal regime for Spanish international development cooperation policy and assigned competences to the Secretary of State for International Cooperation of the Ministry of Foreign Affairs and Cooperation (MAEC) for the management, development and implementation of official Spanish development cooperation policy.

The Spanish Agency for International Development Cooperation (AECID) is a public law entity attached to MAEC, through the Secretary of State for International Cooperation. As prescribed in the IDCA, it is the management body for Spanish international development cooperation policy.

Act 36/2010, of 22 October 2010, establishing FONPRODE and its Regulations

Act 36/2010 of 22 October 2010 established the Fund for the Promotion of Development (FONPRODE) as an instrument for development cooperation, managed by MAEC, through the Secretary of State for International Cooperation. The establishment of FONPRODE has the following objectives:

- 1) To provide international development cooperation policy with a financial channel that meets the requirements of effectiveness, coherence and transparency implicit to appropriate development aid management, in line with

the principles and processes contained in the Spanish Development Cooperation planning documents, the Paris Declaration on Aid Effectiveness, the European Code of Conduct on the division of labour in the field of development policy and the Accra Agenda for Action.

- 2) To progress in achieving Spain's international commitments as a donor State, especially regarding the 0.7% of gross national income to be allocated to development cooperation by 2015, thus contributing to fulfilling the international community's commitments on development, especially the Monterrey Consensus and the Millennium Declaration, paying special attention to the impact of the current economic crisis on the Millennium Development Goals.

According to Act 36/2010, FONPRODE may finance (among others) operations to provide credit, loans and lines of credit on concessional terms, including contributions to microfinance programmes and actions supporting the social productive networking, and the temporary acquisition of direct or indirect equity or quasi-equity.

The regulatory development of FONPRODE, approved by Royal Decree 845/2011 of 17 June 2011, by which the FONPRODE Regulations are approved, supplements the rules applicable to the Fund in areas such as the fund management, the organic structure and functions of the Fund's Executive Committee and of the FONPRODE Office, the social impact, gender or environmental studies or the information to be provided to other departments within the General State Administration regarding operations authorized by the Fund.

Foreign Debt Management Act 38/2006

The Foreign Debt Management Act 38/2006 determines the principles and regulations of the instruments based on which, the management of the foreign debt owed to Spain needs to be founded and further developed. The main goal is to further articulate the foreign debt management with the Spanish Development Cooperation policy, in accordance with the priorities and strategies of the Spanish Development Cooperation Master Plan. Moreover, it should be actively integrated within the international multilateral framework, be applied in solidarity with developing countries and be coherent with Treasury policy.

Royal Decree 1080/1991, of 5 July 1991, identifying the countries or territories referred to in Article 2, Section 3, item 4 of the Urgent Fiscal Measures Act 17/1991, of 27 May 1991, and Article 62 of the General State Budget Act 31/1990, of 27 December 1990.

This Royal Decree establishes the list of countries and territories to be considered tax havens for the purposes of the provisions in this respect. The list is subject to modifications required by practice, changes in economic circumstances and the course of international relations.

The countries and territories referred to in Article 1 which sign an exchange of information agreement with Spain on tax matters or a convention to avoid double taxation, with an exchange of information clause, will cease to be considered tax havens at the moment that such agreements or arrangements come into effect.

STRATEGIC PLANNING AND PROGRAMMING

Main planning instruments of the Spanish Development Cooperation policy

The *Spanish Development Cooperation Master Plan*, published every four years, constitutes the main planning instrument. It sets out the objectives and the sectoral and geographical priorities for Spanish Development Cooperation, together with intervention criteria to be observed in the implementation of its development policy. The Master Plan defines the processes of planning, monitoring and evaluation needed for a consistent, coherent and sustained management of the development cooperation policy within the framework established by the International Development Cooperation Act 23/1998, of 7 July 1998. Furthermore, the Master Plan addresses the possibility that certain areas of development policy may be more specifically considered during the 4-year period in question, by means of Policy Papers.

The *International Cooperation Annual Plan* is the document published each year specifying the strategic objectives and intervention criteria of the Master Plan. This document sets out the estimated Spanish Development Cooperation aid flows Spanish Development Cooperation, its horizontal, sectoral and geographical priorities, the cooperation actors involved and the instruments through which they will be channelled. Thus, each year a list is prepared of eligible, preferential actions for FONPRODE financing, as required by Article 6 of Act 36/2010.

The planning process includes the development of Strategies and Methodologies, in accordance with the priorities established in the Master Plan, in order to guide and facilitate Spanish Development Cooperation actions.

Sector Strategies provide guidelines for Spanish Development Cooperation in key sectors for development, such as: Education, Health, Gender, Environment, Food Security, Promoting Democracy and the Rule of Law, Culture, and Promotion of Economic Growth and Productive Networking.

Horizontal Strategies state the horizontal priorities that must be observed in Spanish Development Cooperation's actions – the Fight against Poverty, Respect for Human Rights, Gender, Environment and Cultural Diversity.

Country Partnership Frameworks are the Spanish Development Cooperation's geographical strategic planning tool for the priority countries identified in the Third Master Plan (2009-2012).

Operational Programming

AECID operational programming is intended to guide, based on a multi-annual scenario, Spanish Development Cooperation interventions and resources, to those

priorities and strategic needs identified by partner countries and consistent with the guidelines set out in the Country Partnership Frameworks, (resulting from a dialogue with the recipient country, with other donors and with the other actors of Spanish Development Cooperation) and coherent with the sectoral action Plans. This operational programming of interventions and resource allocations is implemented in association with the AECID multi-year Management Contract.

INTEGRATION WITHIN THE SPANISH DEVELOPMENT COOPERATION FRAMEWORK

Operations of reimbursable financial cooperation must be coherent with the key planning instruments of Spanish Development Cooperation, its geographical priorities and the sectoral content developed in the current Master Plan, the sectoral and horizontal action plans and strategies, as well as the partnership frameworks for each country. To ensure these aims are achieved, the FONPRODE Office, in collaboration with the Directorate General for Development Policy Planning and Evaluation, with the Directorates for Geographical Cooperation and the Directorate for Sectoral, Gender and NGO Cooperation, will make sure that all actions comply with Spanish development cooperation planning.

In addition, to ensure the integration of FONPRODE within Spanish Development Cooperation, the FONPRODE Office will participate in the construction of Spanish development policy, via the mechanisms established for this purpose.

Issues concerning the use of technologies

In view of the fact that both agriculture and renewable energies are areas eligible for FONPRODE funding, it is appropriate to highlight two particularly sensitive elements of Spanish development policy, with which the activities funded must be consistent:

- 1) **Biotechnology:** As established in the Third Master Plan, in accordance with the “Precautionary Principle” adopted by the European Union and set out in the Convention on Biodiversity (indigenous peoples and the Cartagena protocol) and in the Treaty on Plant Genetic Resources ratified by Spain, the use of biotechnology must incorporate the necessary precautions to respect human health and the environment, to protect the integrity of indigenous genetic resources, and to take into consideration possibly adverse effects on poor agricultural areas (such as dependence on input suppliers). Furthermore, the use of biotechnology to enhance agricultural production is not considered a suitable option to be funded by Spanish Development Cooperation.
- 2) **Biofuels:** The Third Master Plan states it should be avoided, even in the case of second-generation biofuels, for limited production resources to be dedicated to the field of bioenergy, and thus endangering food security. The use of biofuels should be conditional on the adoption of sustainability standards that ensure maximum emissions reduction, non-competition with food production and

food sovereignty, sustainable development, the fight against climate change and respect for the environment.

In this sense, Spanish Development Cooperation will promote the use of appropriate technologies in accordance with the conditions specific to each developing country, that serve to encourage the efficient use of energy, to respect the environment and to respond to the countries' own factors and capacities, thus avoiding, as far as possible, an excessive dependence on technology and helping recipients to develop their own technological efforts.

GENERAL CRITERIA

It is now described, the main implications of the measures adopted in this Code of Responsible Financing, which are applicable to all operations eligible for FONPRODE reimbursable financing. These criteria should be viewed as an ex ante assessment guide, prior to the approval of operations, in order to give priority to those which proactively incorporate in their functioning, their regulatory framework and their implementation the goal of making a positive impact in reducing poverty, and enabling the fulfilment of human rights, gender equality and environmental protection. Once the operation is approved, these criteria will serve to **guide its monitoring and evaluation**.

FONPRODE funding excludes all potential beneficiaries with a documented history of, or ongoing prosecution regarding, human rights violation, corruption or environmental damage.

Furthermore, to facilitate the adaptation of small businesses in partner countries, the FONPRODE Office will make available, when necessary, support mechanisms to provide the specialized knowledge needed and thus facilitate the participation of these companies as ultimate beneficiaries of the Fund.

SOCIAL AND ENVIRONMENTAL IMPACT

Article 19 of the FONPRODE Regulations, on prior impact assessment in development actions, states:

*For the analysis of performance in social, gender and environmental issues, business practices will be assessed and the operation will be classified according to internationally adopted standards for the **categorization of social and environmental risks**. When it is considered that the operations in question could provoke negative social, gender or environmental externalities, an **impact study** must be conducted.*

Accordingly, the FONPRODE Office will assess the level of social and environmental risks of each action and classify them following the criteria established in the International Finance Corporation (IFC) Sustainability Policy currently in force:

Category A: Commercial activities with potential significant adverse social and/or environmental impacts that is diverse, irreversible and/or unprecedented.

Category B: Commercial activities with potential limited adverse social and/or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures.

Category C: Commercial activities with minimal or no adverse social and/or environmental impact.

Category of Financial Intermediaries: Commercial activities involving investments in financial intermediaries or those performed via delivery mechanisms involving financial intermediation. This category is subdivided into "High", "Medium" and "Low" to describe the relative risk profile of the portfolio, corresponding to categories A, B and C above.

Social and Environmental Impact Assessment

Operations classified as Category A or B, or "High" or "Medium" Risk in the category of Financial Intermediaries, the following studies will be performed:

- 1) **Initial Social and Environmental Assessment (ISEA)** to identify potential adverse effects and their significance, as well as the possibility of reducing or eliminating risks by means of mitigation measures. The ISEA will provide a brief presentation of the key social and environmental elements, based on currently available information, and of the need or otherwise for an Environmental Impact Assessment (EIA) to be carried out. When the ISEA provides a definitive solution to the risks identified, no EIA will be required.
- 2) **Environmental Impact Assessment (EIA).** When the ISEA shows it to be necessary, the FONPRODE Office will require the funding beneficiary to obtain an EIA. The latter will consider the possible consequences or social and environmental impacts of the operation, both positive and negative, to be taken into account in the design of the operation.

The norm to be followed in conducting the above assessments is the *Practical Guide to ex ante Poverty Impact Assessment* developed by the OECD Development Assistance Committee.

For activities funded through Financial Intermediaries, the FONPRODE Office will require these intermediaries to classify the risk level of their operations and to follow

the procedure set out in the above paragraph, for those classified as High or Medium Risk, ensuring that the FONPRODE Office has access to this information.

RESPECT FOR HUMAN RIGHTS

The principles of the United Nations Global Compact, to which the Secretary of State for International Cooperation is a co-signatory, are derived from the Universal Declaration of Human Rights, the International Labour Organization Conventions, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption. The first two of these principles make direct reference to human rights.

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

The practical implications for the implementation of these principles have been developed by the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, in the document "**Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy framework**⁵". This document will be the FONPRODE Office reference guide to compliance with the above principles. The following text summarises the general and operational lines described in the above guide, which are relevant to Spanish Development Cooperation reimbursable financial cooperation. Although these guiding principles are applicable to both States and companies, the present document describes only those applicable to companies, given the nature of the instrument to which this Code is directed. As a control mechanism, provisions for contract-terminating clauses are included, should these principles be breached.

Foundational principles

- 1) Business enterprises should respect human rights. This means that they should avoid violations of any kind of human rights and should address adverse human rights impacts in operations in which they are involved.
- 2) The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the Universal Declaration of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

⁵ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Human Rights Council. Seventeenth Session. Agenda item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. A/HRC/17/31

- 3) The responsibility to respect human rights requires that business enterprises:
 - a. Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
 - b. 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.
- 4) The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.
- 5) In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:
 - a. A policy commitment to meet their responsibility to respect human rights;
 - b. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
 - c. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

Operational principles

Policy of Commitment

As a basis on which to establish their responsibility to respect human rights, companies must make a policy statement expressing their commitment to respect human rights, and this statement should:

- 1) Be approved by the highest level of management;
- 2) Be based upon the judgement of internal or external experts;
- 3) Set out the company's expectations in relation to human rights for its staff, associates and other stakeholders involved in its operations, products or services;
- 4) Be made known to the public and communicated both internally and externally, to all staff, partners and other stakeholders;
- 5) Be integrated into the company's operational policies and procedures.

Due diligence for human rights

In order to identify, prevent, mitigate and report on how to respond to adverse impacts on human rights, companies should apply due diligence procedures for human rights in their operations. This process should include at least an assessment of the actual and potential impact of their operations on human rights, the measures available in response to the issues identified, a monitoring of the results achieved, and communication of how the impacts have been addressed. This due diligence:

- 1) Should cover the adverse impacts that may be caused or directly contributed to by their activity, as well as impacts associated with the operations, products and services affected by the company's commercial relations;
- 2) Should be of varying complexity depending on the company's size, the risk of provoking severe adverse impacts on human rights, and the nature and context of its operations;
- 3) Should be an ongoing process, because the risks associated with human rights may vary over time, and the company's operations and the context in which it operates may also evolve.

To carry out this process, the company should:

- 1) Consult experts in the field of human rights;
- 2) Engage in meaningful consultation with groups liable to be affected by possible impacts, as well as with other stakeholders, in accordance with the company's size and the nature and context of its operations.

In order to ensure proper integration of the results of due diligence:

- 1) Responsibility for ensuring compliance with the measures proposed must be assigned to appropriate levels and functions within the organization;
- 2) Decision making, budget allocation and monitoring processes must enable an effective response to be made.

Appropriate measures may vary depending on:

- 1) Whether the company causes or contributes to an adverse impact, or whether the latter is a direct result of the operations, services or products of a related company;
- 2) The scope of the company's capacity to address adverse effects.

In order to verify whether adverse impacts on human rights are being addressed, companies should monitor the effectiveness of their response. This monitoring should:

- 1) Be based on appropriate quantitative and qualitative indicators;

- 2) Be based on information from internal and external sources, including interest groups affected.

To be accountable for how human rights impacts are being addressed, companies must be prepared to communicate their strategy, especially in response to concerns raised by shareholders. Companies operating in contexts that imply a high risk of provoking severe human rights violations must formally report on how they are addressing these risks. Such notifications:

- 1) Must be presented in a manner and frequency to adequately communicate the company's impact on human rights, in a form that is accessible to the target audience;
- 2) Must provide sufficient information for users to evaluate the adequacy of the company's response;
- 3) Should not prejudice shareholders, employees or the legitimate requirements of commercial confidentiality.

Reparation

In cases where it is established that the company has caused or contributed in some way to a human rights violation, due reparation should be made, or contributed to, via legitimate processes.

Questions of context

In any context, companies should:

- 1) Wherever they operate, comply with all applicable laws and respect internationally recognized human rights;
- 2) Seek formulas that allow them to respect the principles of internationally recognized human rights when faced with conflicting demands;
- 3) Consider the risk of causing or contributing to causing serious violations of human rights as a question of abiding by the law, wherever they operate.

In addition, this Code emphasizes the requirement for the company's production system to comply with national legislation concerning human rights. In this respect, beneficiary companies must undertake to ensure such compliance and to establish mechanisms to ensure similar compliance by directly dependent representatives, subcontractors and subsidiaries, as outlined in the OECD Guidelines for Multinational Enterprises.

RESPECT FOR LABOUR RIGHTS

The **principles of the UN Global Compact** refers to the ILO Declaration on Fundamental Principles and Rights at work, compiled in the eight core conventions known as "fundamental rules". For their promotion and implementation, the ILO developed the "Decent Work Agenda" which is embodied in specific interventions. The operations financed by FONPRODE will in no case be contrary to any of these agreements and programmes.

PROMOTION OF GENDER EQUALITY

The FONPRODE Office, as an instrument of Spanish development cooperation policy, requires compliance with the following principles, based on Spanish Development Cooperation's Gender Strategy and on the IFC Performance Standards.

Regulatory Context

In all cultural and ethnic contexts, the right to gender equality and women's specific rights must be recognised, as sanctioned by the national law of the country in which the funding operation is applied, and in international agreements.

- 1) National legislation: compliance with national legislation on non-discrimination and equality
- 2) International legislation: almost all countries have ratified and assumed the most important international conventions and agreements to promote women's rights and gender equality. FONPRODE seeks to ensure compliance with the following international commitments:
 - **The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**: In 1979, CEDAW was adopted by the UN General Assembly as an internationally binding instrument which provides the basis for equality between men and women and establishes the agenda for national action to eliminate gender discrimination and to protect human rights and the fundamental freedoms of women.
 - **ILO Conventions**: Fundamental binding conventions: 100 on equal pay, 111 on discrimination; in addition, Conventions 103 and 183 (Revised) on maternity protection.
 - **Global Compact**: One of its guiding principles is that of gender equality.
 - **Beijing Platform for Action**: In 1995, the Platform published its agenda for empowering women, based on the principles of sharing power and responsibility between men and women in all areas. The main goal of this agenda is to eliminate barriers to women's active participation in all

spheres of public and private life, by facilitating equal roles in economic, social, cultural and political decision making.

Organisational context

The IFC Performance Standards, compliance with which is required of all recipients of FONPRODE resources, provide the following measures to ensure non-discrimination and equal opportunities in the workplace:

- 1) Application of the principles of non-discrimination, with special attention to interventions for women who suffer double or triple discrimination due to their culture, ethnicity or sexual orientation. These principles are aimed at ensuring equality at work, in terms of employment and equal treatment.
- 2) Development and implementation of a gender-focused safety and health at work policy.

In addition to the provisions of the IFC Performance Standards, the FONPRODE Office will promote equal pay and maternity protection, the promotion of responsible fatherhood and measures to reconcile work and family life, and to achieve co-responsibility in this respect, together with actions to prevent the sexual and occupational harassment of women. Furthermore, measures will be taken to prevent and prosecute cases of trafficking of women and girls.

Operative context: design, management, monitoring and evaluation

To identify and promote changes towards gender equality, and to prevent, mitigate and report on how responses are made to adverse impacts on gender, the FONPRODE Office takes the following actions:

(1) Designoftheoperation:

- a. Conduct an analysis of the potential contribution to gender equality and development in its interventions/operations. If the analysis shows it important to actively promote this contribution, the project will incorporate specific actions for gender equality.
- b. Ensure the mainstreaming of gender issues throughout the investment cycle, within analyses of risks, impacts and opportunities. This should be reflected both in the initial assessment and in managing social and environmental risks. In this regard, mechanisms and measures will be introduced to ensure compliance with the principles outlined in this Code, taking expert advice on gender issues when so required.
- c. Require information disaggregated by sex of project beneficiaries, together with details of resignations and dismissals of female staff due to maternity.

(2) Preventivemeasures

Implicit to the application of IFC Performance Standards is the recognition that projects relating to land acquisition may cause adverse impacts to individuals and communities who use the land, together with recognition of the property rights of women. In this respect, the measures to be taken require the mainstreaming of women and consideration of their interests in all aspects of any resettlement planning and implementation, particularly in relation to compensation and benefits. The rules also require that documentation of ownership or occupancy and compensation agreements be issued in the name of both spouses or the head of the household in the case of single parents. Livelihood losses may affect men and women differently, and the rules require additional assistance for resettlement through, for example, training, and access to credit and job opportunities for women. Where national legislation and systems of tenure/ownership do not recognize the rights of women to possess or to purchase property, measures should be considered to offer women the best possible protection and to safeguard their right of access to property, awarding title in such a way as to avoid the automatic transfer of property to the children when the latter are of adult age.

When indigenous people are involved, the performance standards require that customers should specifically consider the role of women in management and the use of land and natural resources; consultations should be made and support given to decision-making processes with a gender-focused approach.

In matters of cultural heritage, application of the IFC Performance Standards requires the client to respect the views of the communities affected, including their women. If the action proposes the use for commercial purposes of cultural resources, knowledge and innovation or the practices of local communities that express traditional lifestyles, there must be negotiation in good faith with the local communities affected, including the women. Cultural values are often perceived differently by men and women, and the project must recognize and address these differences.

(3) MonitoringandAssessment

With regard to monitoring and assessment, the performance standards require customers to systematically compile data and information on gender results:

- a. The monitoring reports must contain gender-specific data, including if necessary proposals for corrective measures to guide interventions or approaches that may be causing adverse impacts with respect to achieving gender equality.
- b. The final reports of the project must include gender-specific results and provide results from interventions made to promote gender equality.

MANAGING FOR DEVELOPMENT RESULTS

The Third Spanish Development Cooperation Master Plan Spanish Development Cooperation sets out the aim of achieving a monitoring system that reports the development results obtained by each cooperation action and places them in context. To enable responsible financial cooperation, the Master Plan proposes a system based on a predetermined set of indicators, for which a GPR⁶ (Corporate Policy Project Rating system) use license has been obtained from DEG⁷, the German development finance institution.

GPR is a tool developed by DEG that serves to facilitate transparency in portfolio evaluations, both ex-antes, by setting goals for various parameters when the project is approved, and ex-post, focusing on the actual return after the investment project has been operating for several years. This methodology is subject to intellectual property rights.

Under GPR, a numerical score is applied to all investments, for each of the project phases. The system is built around four dimensions, in each of which a project value is assigned. These dimensions are: (i) the long-term profitability of the project, (ii) the effects on development, (iii) the strategic role of Spanish Development Cooperation, and (iv) the return on invested capital.

In addition, GPR incorporates qualitative information on the effects of projects, with respect to gender issues, training, technology and knowledge transfer, as well as the project's contribution to the development of markets and its effects on infrastructure.

Several members of the European Development Finance Institutions (EDFI) network – Norfund, Finnfund, BIO, Proparco, COFIDES, SIFEM, and OeEB – use versions of GPR to track the development impact of their actions. GPR is also used by BCIE, NORSAD and DPI, among others.

The FONPRODE Office will introduce the modifications needed to adapt this instrument to the specific requirements of Spanish Development Cooperation, and it will subsequently be submitted to the FONPRODE Executive Committee.

Targeting funding at poverty reduction

Being a development institution, the FONPRODE Office must not only monitor the development impact achieved by investment but also ensure that funds actually go where positive results can be obtained in development and in poverty reduction. Therefore, in the decision making process great care should be taken to ensure there is clear added value in the channelling of public funds to private investment; and once the investment has been approved, the process must be monitored to check that the desired impacts are indeed being achieved.

As stated in the Spanish strategy for "Promotion of economic growth and productive networking", economic growth is essential for reducing income poverty, but economic

⁶ *Geschäftspolitisches Projekt Rating*

⁷ *Deutsche Investitions- und Entwicklungsgesellschaft*

growth alone is not enough. The promotion of economic growth must be viewed as an essential element within the global strategy of the Spanish Development Cooperation's for promoting sustainable human development.

Economic growth is based on a continuing rise in the number and added value of production and exchange activities performed by market agents, and on the diversification of these activities. Growth benefits the poor by making available to them affordable goods and services to meet their needs, and by giving them access to value-generating activities to contribute to wealth creation.

Inclusive growth⁸ is that which:

- Takes place in sectors involving the population living below the poverty line;
- or in regions/areas where people live in poverty (isolated peripheral areas, rural areas and marginalised urban areas);
- or which makes use of production factors possessed by this population;
- Extends the capabilities and skills of people living in poverty.

Currently, there is no standardized set of indicators capable of describing the effects of private sector investment on poverty reduction⁹, and to achieve such a set of indicators a great many difficulties would have to be overcome. On the one hand, different sectors reflect the possible effects of investments via diverse indicators. On the other, the volume of investment would also need to be standardized, and it would be necessary to determine the minimum amount of resources needed for a significant impact to be claimed. The duration of the investment poses another challenge, as one would need to distinguish investments with a direct impact from those producing long-term, indirect benefits.

Accordingly, the FONPRODE Office has chosen to allow each operation to select the measures that are most appropriate for measuring the contribution made to poverty reduction. At the same time, FONPRODE is contributing to the efforts of international development finance institutions to develop a standard methodology for assessing the impact of their actions toward reducing poverty.

PROCEDURE FOR CLAIMS AND COMPLAINTS

Claims or complaints may be presented by individuals, groups, communities or other parties who believe they have been or could be adversely affected by operations

⁸ *Determinants of Pro-Poor Growth*. Stephan Klasen. October 2007. 2020 FOCUS Brief on the World's Poor and Hungry People. **International Food Policy Research Institute**.

⁹ *Assessing IFC's Poverty Focus and Results*. **Independent Evaluation Group 2011**

financed through FONPRODE, and which violate this Code of Responsible Finance. They may also do so through a representative or an organization. The latter may submit complaints only when they have an express mandate to do so from the victims.

For a complaint to be made, it is not necessary to provide evidence, although supporting material is welcome. Complaints made in bad faith, or which are frivolous or have been formulated to obtain a competitive advantage will be rejected.

If requested by the complainants, the FONPRODE Office will not reveal their identity. Moreover, the documentation accompanying the complaint will be considered confidential and not disclosed without the complainant's consent.

The FONPRODE Office will confirm receipt of the complaint in the language in which it was presented. Within 15 working days (not counting the time needed for translation of the complaint and supporting documentation), the FONPRODE Office will state whether the complaint is accepted for consideration. If it is, the Office will explain the procedure to be followed regarding the issues reported.

Complaints must be submitted in writing and may be in any language. They may be sent by email (to centro.informacion@aecid.es), by postal mail or hand-delivered to the AECID Registry, Madrid, or to any of its Technical Cooperation Offices.

Address for postal mail:

Oficina del FONPRODE

Agencia Española de Cooperación Internacional para el Desarrollo

Avda. de los Reyes Católicos, 4

28040 Madrid

SPAIN

SPECIFIC CRITERIA

FOR CREDITS, LOANS AND LINES OF CREDIT

PREVENTING UNSUSTAINABLE DEBT

The FONPRODE Office will adopt the following measures, in accordance with the Foreign Debt Management Act 38/2006 of 7 December 2006, regulating debt management to prevent unsustainable debt in the operations involving credit, loans and financial facilities to States, regional, provincial and local governments and other public sector entities.

A. Perform an analysis of risk and impact on debt sustainability in the host country, taking into account the following elements:

- **IMF Analysis of Debt Sustainability** for financing operations to States (Debt Sustainability Framework).
- **Qualitative assessments** of the level of savings, debt burden in relation to GDP growth, fulfilment of the Millennium Development Goals, debt profile, indicators of access to productive finance, and structural capacity to absorb external shocks. As a complement to the analysis of debt sustainability mentioned above, this assessment will be summarised in a brief report, made on the basis of information provided by development finance institutions, the Technical Offices of Spanish Development Cooperation and the Ministry of Economic Affairs.

B. Ensure that the operations regarding credit, loans and lines of credit respect the following principles:

- Coherence with the multilateral framework: operations must meet the minimum requirements of concessionality established by the international community, and particularly those for low-income countries established by the IMF and the International Development Association (IDA).
- Purpose and amount. The loan documents must specify its purpose, amount and beneficiaries.

- Obligations of the parties and foreseeable disbursement details. The borrower must undertake to use the funds as stipulated in the loan agreement.
- Compliance with applicable national and international laws.
- Legal authorization from the Ministry responsible for managing the country's foreign debt. Legal authorization to negotiate. Both parties must provide proof of power of attorney and negotiation before any aspect of the loan may be negotiated. The loan document must include this authorization to ensure that the loan or line of credit is subject to the recipient country's central government controls on foreign debt. In addition, the document must show that the necessary parliamentary approval or any other administrative approval in the recipient country has been obtained.
- Interest rates. The loan document must clearly indicate the type and level of interest rates applicable (fixed or variable). In the case of variable rates, these must at all times take into account the loan's special nature of Official Development Assistance.
- Specification of the currency of payment, repayment, interest payments and other costs.
- Payment profile and accountability of the debtor. In line with its nature of Official Development Assistance, sufficient information will be provided regarding the grace period, which tends to be minimal, as well as the maturity and repayment profiles (date and amount of debt service).
- Complementary documentation. Care must be taken to ensure that all information related to the loan is included in a single document, avoiding complementary papers.
- Conflict of interest. The loan document must mention any other duties to be performed by the lender with respect to the loan.
- Sale of loan on the secondary market. For poor countries benefiting from the Heavily Indebted Poor Countries (HIPC) and Multilateral Debt Relief initiatives, the Spanish Government undertakes not to transfer its debt to third parties, in order to facilitate a subsequent solution to any problem of over-indebtedness.
- Aid effectiveness and focus on poverty. Loans will be designed to ensure compliance with the development policies and borrowing strategies designed by the recipient country.
- Need Assessments. The borrower must provide clear documentation or other evidence that demonstrates the need for the project, and compliance with the provisions of the ex ante impact assessment.

- Public consent and transparency. The debt contract must be transparent and participatory. Parliaments and affected communities in the borrowing country must be informed in sufficient time about the operation, including its purpose and conditions, in accordance with national legal regulations. Information on aid operations will be publicly available in the borrowing countries and in Spain.
- Procurement. Procurement processes should be conducted in accordance with the provisions of Article 9 of the FONPRODE Act.
- Local capacity-building. Procurement procedures should contribute to developing the capacities of local companies and institutions, on the basis of international agreements in this regard.
- Tied loans. Debt contracts will not, under any circumstances, be tied to the acquisition of Spanish goods or services, in accordance with the recommendations of the OECD Development Assistance Committee.
- Debt restructuring. The details of any restructuring agreement must be made public.
- Multilateral framework. In addition to the contract provisions on the prevention of over-indebtedness, as defined in the External Debt Management Act of 8 December 2006, Spain will follow the principle of multilateral coordination, both in terms of preventing over indebtedness and in providing solutions to these problems, following Article 3.d) of the same Act.
- Reciprocity. The loan document must not contain any clause requiring reciprocity or similar.

FOR INVESTMENT FUNDS

RESPONSIBLE INVESTMENT IN PRIVATE EQUITY

Responsible Investment in Private Equity Private Equity – Guide for Limited Partners

As a signatory to the Principles of Responsible Investment (PRI), the FONPRODE Office is committed to ensuring compliance with these principles in all its investment operations. Although experience is still too limited to enable us to speak of best practices in applying PRI to investment funds, the Office will follow the guidelines developed in the Guide for Limited Partners, so that social, environmental and governance considerations may be taken into account in its investment agreements.

ILPA Private Equity Principles

The FONPRODE Office accepts and applies the Private Equity Principles developed by the Institutional Limited Partners Association (ILPA) as a negotiation guide for processes to formalize Spanish investments in investment funds. The concepts reflected in these principles suggest best practices and are intended to serve as the basis of the negotiation process between the fund manager and investor, with the aim of improving the industry and long-term benefit of both parties, aligning their respective interests. Considering that agreements setting up companies, with the related documents, often considerably exceed 100 pages, containing a great many clauses, it is increasingly difficult to focus on those which are truly important in aligning the interests of both parties. Accordingly, these fundamental principles provide a key guide to the following:

- 1) Properly aligning the interests of investors and fund managers;
- 2) Improving the governance of investment funds;
- 3) Providing greater transparency to investors.

Guidelines for an “Active Dialogue” with fund managers

"Active dialogue" is the strategy that will be adopted by the FONPRODE Office to comply with this Code of Responsible Finance. Accordingly, companies presenting a viable plan for the future, in accordance with the procedures established in this Code regarding social, environmental and human rights, may be beneficiaries even if initial management deficiencies are observed. On its part, FONPRODE can add value, favourably influencing the approach taken to address these deficiencies. As basic elements of this active dialogue, the FONPRODE Office will:

- 1) Participate actively in the governing bodies of the initiatives in which it invests. In the case of investment funds, the Office will have at least one representative on the Advisory Board and at the shareholders' meeting. In the case of co-financing operations and/or those implemented through multilateral agencies and international financial institutions, FONPRODE will have a permanent presence in their respective governing bodies, in conformity with the requirements and accountability obligations of Spanish Development Cooperation.
- 2) Exercise its right to file resolutions for a vote, in accordance with the applicable rules.
- 3) Work in networking and participate in joint initiatives with other investors, such as the PRI Engagement Clearinghouse¹⁰.
- 4) Disinvest only as a last resort, when all efforts to exert an influence have failed. The possibility of such an action should be anticipated in any share subscription contract. Furthermore, this divestment should be made public, as a final

¹⁰ <http://www.unpri.org/collaborations/>

attempt to achieve the incorporation of the principles of responsible investment.

FOR MICROFINANCE OPERATIONS

FONPRODE'S microfinance actions or those with microfinance components, both reimbursable and non-reimbursable, regardless of the instruments used, will be governed by the following principles:

1. **Key principles of microfinance.** *Building financial systems for low-income populations*, developed by the Consultative Group to Assist the Poor (CGAP).
2. **Principles for inclusive microfinance investors**, developed by CGAP and the ACCION International Centre for Financial Inclusion.
3. **Client Protection Principles in the microfinance sector**, developed by CGAP and the ACCION International Centre for Financial Inclusion. The FONPRODE Office will work to ensure these principles are applied by the entities providing microfinance services and receiving resources from FONPRODE, directly or indirectly, and either reimbursable or non-reimbursable. This obligation will be incorporated into the contracts or agreements governing such contributions.
4. The use of social and environmental performance assessment and monitoring tools by FONPRODE beneficiaries' will be actively encouraged. In this sense, the FONPRODE Office may collaborate with beneficiaries in conducting social performance analysis or ratings (applying the **Principles of Social Performance Management**, developed by the Social Performance Task Force).
5. Entities receiving FONPRODE resources will be encouraged to improve the transparency of their financial and social performance, for example by reporting to the MIX Market.

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