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## **The Danish Institute for Human Rights input on Draft New Danish Business Instruments for Sustainable Development (E3 and E5)**

The Danish Institute for Human Rights welcomes the opportunity to share input on draft project documents for new Danish business instruments for sustainable development organised by the Ministry of Foreign Affairs' (MFA).

In line with Denmark's Strategy for Development Cooperation, which includes an enhanced focus on the role of the private sector in development, the MFA is suggesting the introduction of five new or revised Danish business instruments with the aim of creating a pipeline of support opportunities that can reduce current Global South related trade and investment barriers from the early exploration stage across to investment and scale-up.

Overall, we welcome the suggestion of establishing a suite of mutually complementary business instruments. Subject to their design and implementation such instruments have the potential to strengthen and support business respect for human rights, sustainable development and the green transition.

Below we include select observations and recommendations on the new business instruments in the form of cross-cutting remarks as well as specific input for E3 and E5 respectively. Our input falls in extension of previously submitted input in the context of draft project documents for instruments E1, E2 and E4 and related dialogue with the MFA.

### **Responsible business conduct**

Only if implemented responsibly will increased private investment and business activities in the Global South contribute positively to achieving the Sustainable Development Goals (SDGs). As recognised in the Strategic Framework Document: "While all supported engagements will have inclusive and sustainable development as their primary objective, they may also entail social or environmental risks that require appropriate management."

Integrating responsible business conduct (RBC) in the design of the instruments themselves, in the selection of Danish and local corporate partners as well as in the policies and practices of the beneficiaries as part of project implementation is

therefore key to achieving intended development additionality outcomes and to realising the stated theories of change relevant to sustainable development.

We welcome the references in the Strategic Framework Document and the project documents to the RBC dimension, to respect for human rights and to related international standards (UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on RBC).

We however also observe that the RBC dimension is somewhat unequally covered across the different instruments and would welcome further explicit integration of RBC, including human rights, in and across the instruments. Below we make concrete suggestions on how to do this in relation to E3 and E5, respectively. At the cross-cutting level we recommend that:

1. The emphasis on RBC including business and human rights is strengthened in and across the five project documents including by further demonstrating *how* RBC will be integrated, operationalised and ensured in practice.
2. The fund manager capacity to implement the RBC dimension is ensured through the introduction of clear RBC-related selection criteria of fund managers as well as incorporation of RBC as part of their key responsibilities.
3. The final project documents outline specific modalities for alignment on RBC across instruments and different fund managers. Given the envisaged two different fund managers in play for E1, E2, E4 and E3 and E5, respectively, it will be important to proactively enable a coherent approach to RBC requirements and development impact across the instruments.
4. The RBC guidelines and tools<sup>i</sup> developed in partnership with DIHR for the (then) Danida Market Development Partnership (DMDP) instrument are revisited, updated and repurposed for the new instruments to capitalise on prior learnings. DIHR remains open to explore collaboration thereon.
5. The risk matrix is further enhanced to demonstrate how to manage the spillover effect between different types of risks: e.g. contextual risks spilling over into programmatic and institutional risks. For example, contextual human rights risks may not only be present in times of instability or change but can be a permanent risk factor in project countries even in stable times. This necessitates proactive human rights and environmental due diligence by companies to ensure RBC and associated development outcomes and manage associated programmatic and institutional risks.

### **Monitoring, Evaluation, Accountability and Learning (MEAL)**

The project documents include suggested approaches to monitoring, reporting and learning including by fund managers and KLIMA and encompass mid-term reviews. It is not clear whether any independent evaluations or thematic reviews are envisaged and how. We recommend that:

6. The approach to MEAL is strengthened in and across the project documents, that evaluation of the RBC dimension and development outcomes is given special emphasis in the MEAL activities and that independent review(s) are explicitly incorporated.

### **Specific input for E3**

We welcome the suggested E3 facility including its emphasis on closing the financing gap for Small and Medium Sized Enterprises (SMEs), targeting the 'missing middle' and allowing small ticket sizes. To further strengthen the human rights, RBC and development impact proposition of E3 we recommend that:

7. The emphasis on decent jobs on page 6 is maintained and further operationalised to ensure sufficient attention to 'decency aspects' of job creation during implementation. We recommend that assumptions made about the positive net employment effects generated by the facility over time (3.2.4) are made conditional upon the quality of these jobs, i.e. whether jobs are in line with international labour rights standards and not just national regulation. We also recommend in the last paragraph of 3.2.4. to reflect that ESG requirements are key to securing the development additionality of the facility including as it relates to generating decent jobs, and not just to avoiding harm. Finally, we recommend in section 3.3. titled 'Additionality' to complement the focus on financial additionality with that of development additionality by outlining methods to ensure development additionality including via proactive responsible business conduct requirements and implementation support.
8. Outcome indicator 1.1. is revised to specify that jobs created and counted will have to be decent jobs. Alternatively, a separate 'decent job' outcome indicator should be included to allow measurement of contributions made to securing living wages and incomes or other aspects of the 'decent jobs' agenda such as freedom of association and collective bargaining.
9. Further clarification is brought around whether and how the financial services sector is in scope of the facility. Financial services are currently listed to be in scope in section 5.2.1. which repeats IFDK's current target sectors. This raises questions on whether and how the facility overlaps with or complements IFDK's existing SME financing channelled through financial intermediaries such as private equity funds and local banks. If financial sector entities are in scope of the facility there is a need to further clarify how ESG and development impacts requirements are envisaged to be implemented and secured, for example by specifying whether expectations apply at the level of the financial institutions or also at the level of final beneficiaries.
10. The core eligibility criteria (5.4.1.) is limited to SMEs rather than including also small mid-caps and opening up to non-SME/mid cap companies through the suggested 'as a point of departure' exception. This is to align the eligibility criteria with the stated objectives of reaching finance constrained SMEs as 'the core drivers of job creation and development in

EMDEs'. We further recommend that the facility uses the IFC's SME definition<sup>ii</sup> rather than the EU's, as the latter was developed for the EU context, meaning for higher income and higher productivity economies, whereas the IFC's provide more flexibility being tailored to lower income and lower capital-intensity contexts relevant to EMDEs. 'Medium' companies as per the EU definition would often be 'large' companies in EMDE contexts and hence choosing a definition more appropriate to the EMDEs is key to achieving the stated objectives around targeting the 'missing middle' and improving access to finance including with small ticket sizes of SMEs that have real financing constraints<sup>iii</sup>.

11. Implementation of ESG and impact management frameworks is explicitly included as IFDK's responsibility in section 5.6. Roles and responsibilities (relevant to cross-cutting recommendation 2 above)
12. The Advisory board composition (8.1) is expanded to include non-commercial participation, for example, by NGOs, think tanks, research institutions and the national human rights institution including to ensure that RBC / development impact-oriented capacity is ensured.

### **Specific input for E5**

We welcome the suggested E5 facility including its emphasis on mobilising private capital for development impact, building new partnerships and strengthening the ecosystem needed to support this endeavour.

We however find that the human rights and RBC related aspects of the instrument are underdeveloped, including in comparison with the other instruments, which is a risk for an instrument which activate partners with ambitious impact orientation. To further strengthen the human rights, RBC and development impact proposition of E5 we recommend that:

13. The RBC component is integrated explicitly in the final project document and facility design including by connecting effective RBC implementation to envisaged development impact results<sup>iv</sup>. This could, for example, include incorporating RBC aspects directly in each of the three facility windows such as by:
  - highlighting RBC as a component of the best-practices sharing and co-creation envisaged for the 'Strategic partnerships' window,
  - incorporating RBC capacity and implementation efforts as a selection criteria and requirement of fund managers when 'de-risking to mobilise' and
  - prioritising RBC in the awareness-raising and capacity building that is envisaged for the 'ecosystem strengthening' window.
14. More clarity is provided on *how* cross-cutting concerns and requirements (section 6) such as those that relate to RBC will be built into the instruments and how related IFDK policies and processes will be complied with. This should include clarifying related roles and responsibilities in 5.3 and outlining how RBC aspects will be monitored and evaluated across the actors involved and the lifespan of the facility. For comparison, the draft E3

project document includes much more detail which may also be of use in an E5 context including as IFDK is the fund manager in both cases as well as due to the potential synergy between the two instruments in terms of investee companies in scope.

15. The final project document in section 3 should incorporate an 'additionality' sub-section similar to the respective sub-sections in the other instrument documents. This is particularly important as robust approaches to both financial and development additionality of the facility is key to meeting stated objectives requiring further clarity and transparency on related methodologies and measurement approaches.
16. Social aspects of impact investing are further defined and proactively targeted by the new facility. This to ensure that the facility does not end up overly focused on environmental related dimensions of impact investing but also seeks out explicit opportunities to further social impact investing. An unintended 'green bias' could for instance flow from SFDR 1.0/2.0 orientation, which currently includes no definition of socially sustainable investments or objectives, as well as from a general under-development of the social impact investing agenda.
17. The focus on 'social companies and businesses' is further explained and the definition and usage of this concept in E5 (5.2.1) is better connected to how social sustainability, human rights, decent jobs and related areas are otherwise captured and addressed in the other new business instruments.
18. The target for outcome indicator 2.3. 'percentage of supported funds meeting agreed ESG and impact reporting standards' is made more ambitious, taking into account the impact orientation of the facility. Concretely we suggest that the indicator is untied from a focus on reporting to emphasise the importance of meeting the standards and not just reporting progress thereon ('percentage of supported funds meeting agreed ESG and impact reporting standards') and that the target is adjusted from 50 to 100%.

We remain available to discuss these recommendations and support the MFA and implementing partners in strengthening and realising the important RBC and development ambitions of the new business instruments overall.

Yours sincerely,  
Signe Andreasen Lysgaard  
Chief Adviser

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<sup>i</sup> Confer [Guidance-Note-on-Responsible-Business-Conduct\\_FINAL\\_B.pdf](#) and [DGBP-Risk-Screening-Tool-January-2021-version-3.xlsx](#)

<sup>ii</sup> [IFC, Interpretation Note on Small and Medium Enterprises and Environmental and Social Risk Management](#)

<sup>iii</sup> [IFC MSME Finance Gap Report](#)

<sup>iv</sup> For inspiration and approaches to better connect E&S risk management efforts with development impact objectives and measurement by utilising human rights see [Human rights at development finance institutions | The Danish Institute for Human Rights](#)