



January 9, 2026

European Bank for Reconstruction and Development (EBRD)

Attn: Ms. Odile Renaud-Basso, President

Attn: EBRD Board of Directors, Green Economy Transition 2030 Strategy Unit, Russell Bishop,
Michael Strauss - EBRD General Counsel

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EBRD Directors (see below); president@ebrd.com; renaudbassoo@ebrd.com; straussm@ebrd.com;
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Re: New Independent Opinion by Authoritative Scholars Detailing EBRD’s Member States’ and EBRD’s Climate Change Legal Obligations - Need for Green Economy Transition 2030 Strategy to Meet These Obligations and to Overhaul EBRD’s Suite of Climate Policies

Dear President Renaud-Basso, EBRD Directors, General Counsel Strauss, and To Everyone it May Concern at EBRD:

Thank you for the opportunity to comment on EBRD’s Green Economy Transition (GET) 2030 Strategy (“GET 2030 Strategy” or “Strategy”). Bank Climate Advocates (BCA) and the undersigned civil society organizations (CSOs) hereby (1) transmit the [November 7, 2025 independent legal opinion from scholars Dr. Johanna Aleria P. Lorenzo and Dr. Jolene Lin detailing Multilateral Development Banks’ \(MDBs’\) and their member states’ climate change obligations under international law and their failures to meet them](#) (hereinafter “Scholars’ Opinion”, “MDB Climate Legal Opinion”, or “Opinion”) and (2) submit our comments on the GET 2030 Strategy requesting the draft Strategy and EBRD’s climate policies are amended to meet the Opinion’s requirements.

The MDB Climate Legal Opinion was reviewed by academics and legal practitioners around the world with applicable expertise who are part of the Climate Research Forum.¹ It authoritatively underscores that if each of EBRD’s member states and or EBRD² desire to meet their own climate change obligations

¹ For information about the Climate Research Forum, see: <https://www.smithschool.ox.ac.uk/research/climate-research-forum>.

² The Opinion directly addresses the climate change legal obligations of EBRD’s Member States when acting at EBRD and supervising its operations. While it also directly addresses the climate change legal obligations of three multilateral development banks (MDBs) – the International Finance Corporation, International Bank for Reconstruction and

under international law, EBRD’s suite of policies applicable to climate change – including its Paris Alignment Methodologies, Environmental and Social Policy, Energy Sector Strategy, and prohibited investments list (“Policies”) – must all be amended to meet the Opinion’s findings.

2024 and 2025 the International Court of Justice (ICJ), IACHR, and ITLOS landmark Climate Change Advisory Opinions crystalized states climate change obligations in regulating public and private actors over whom they exercise jurisdiction or control, including through policy making and public finance and investment decision-making. See 2025 ICJ Climate Advisory Opinion at pps.138, 208, 282, 343, 427. But at EBRD, there seems to be a common disregard and or lack of awareness that EBRD’s member states have and must each meet their own climate change obligations under customary international law and treaties in adopting EBRD policies, in voting to approve EBRD investments, and in ensuring adequate EBRD policies and operations on an ongoing basis. As seen in our advocacy across MDBs/International Financial Institutions (IFIs), many European MDB member states express they are unaware they have climate or any legal obligations pertaining to MDB policies or when making their financing approvals at MDBs. Others are aware, but their capitals have yet to conduct legal analysis or evaluate legal risks.

Key verbatim findings from the Scholars’ Opinion, that are especially relevant to EBRD and its member states meeting their legal obligations across the suite of EBRD Policies applicable to climate change and the GET 2030 Strategy, are pasted by category into Appendix A. In sum, the Scholars’ Opinion authoritatively and independently demonstrates the following key takeaways BCA and Civil Society³ have been conveying for quite some time:

- (1) that each EBRD member state has its own stringent climate change due diligence obligations under customary international law and the Paris Agreement, UNFCCC, the Law of the Sea, and or human rights treaties that apply not only to the adoption of polices and their amendments at EBRD, but also on an ongoing basis to EBRD’s financing and guarantee decisions, supervision of its investments, and proactively in ensuring the legal adequacy of its policies and operations;
- (2) that EBRD is bound by these same climate obligations under customary international law, and further must meet its Board adopted policy requirements; and
- (3) that EBRD’s Policies, including its Paris Methodologies,⁴ Environmental and Social Policy (ESP)⁵, Energy Sector Strategy, and prohibited investment lists, fall severely short of EBRD’s and its member states’ climate change due diligence obligations for the following core reasons:

Development, and Asian Development Bank, the Opinion’s analysis also applies to EBRD, as EBRD is a MDB and EBRD’s constitutive treaty (also referred to as constitutive instrument, charter, or articles of agreement) is sufficiently similar to IFC’s, IBRD’s, or EBRD’s for all relevant purposes.

³ See e.g. the following BCA and Civil Society comments on EBRD’s Paris Methodologies and Draft Environmental and Social Policy detailing EBRD’s and its member states’ climate change obligations under international law: BCA’s and CSOs’ May 16, 2024 climate change comments on the draft EBRD Environmental and Social Policy, [BCA’s June 6, 2025 comments on EBRD’s Paris Methodologies](#), and the May 25, 2025 Climate Reality Project GET Letter at fn 4 citing to and providing the legal analysis in BCA’s June 6, 2024 EBRD Paris Methodology comments.

⁴ European Bank for Reconstruction and Development, *Methodology to determine the Paris Agreement alignment of EBRD Investments*, 2024 (herein after “EBRD Paris Methodologies”).

⁵ The Scholars’ Opinion does not assess the legal adequacy of MDB safeguards / environmental and social policies / environmental and social frameworks outside of opining IFC’s, IBRD’s, and ADB’s prohibited investments lists are legally inadequate to meet their and its member states’ climate change due diligence obligations. However, a major legal inadequacy in these MDBs’ Paris Methodologies the Scholar’s Opinion identifies, that also holds true for their safeguard policies, is that there are no standards – such as the requisite use of “best available science” – governing the due diligence required for GHG emissions quantification, cumulative and overall impacts assessment, alternatives analysis, and mitigation requirements.

- a. They fail to exclude upstream, midstream, and downstream natural gas and other fossil fuel projects;
- b. They do not include legally sufficient climate change due diligence requirements that requires use of the best available science standard for any financing or guarantees of fossil fuel or fossil fuel related projects that (i) may be allowed - such as for those allowed in truly exceptional circumstances where best available science and methods conclusively demonstrate renewables cannot meet energy demand even at higher costs; or (ii) that may prolong the life of, incentivize, subsidize, and or lock a country into fossil fuel extraction, production, and consumption;
- c. To determine whether an investment or guarantee is permissible or Paris aligned, EBRD's Policies allow EBRD to defer to the countries' desires, discretion, and plans (e.g. Nationally Determined Contributions (NDCs) or Long Term Strategies (LTS)) where EBRD's contemplated investments are located, instead of ensuring the investment is consistent with EBRD's and its member states' climate change obligations; and
- d. They fail to mandate the use of a "best available science" standard which requires ensuring best available science and methods are used for and applied to: (i) quantifying Scope 1, 2, and 3 GHG emissions and in conducting GHG emissions community impact, cumulative impact, alternatives, and mitigation analysis prior to financing and guarantee decisions; (ii) providing public review and opportunity to comment on these figures and analyses; (iii) avoiding financing of fossil fuel projects wherever possible and where renewables can meet energy demand even at higher costs; and (iv) for all projects, avoiding of GHG emissions as far as the alternatives and mitigation analysis demonstrates is feasible.

Conclusion and Requests:

EBRD Must Address the Climate Crisis: As EBRD may be aware, approximately 3.3–3.6 billion people that live in contexts that are highly vulnerable to climate change, are already suffering from the worst impacts of global warming, such as more frequent and severe heat waves, wildfires, supercharged storms, atmospheric rivers, and extended droughts.⁶ And things will get worse. Global warming is expected to increase at least through 2040 mainly due to increased cumulative greenhouse gas (GHG) emissions in nearly all considered scenarios and modelled pathways. And on the world's current trajectory of GHG emissions, the global temperature will increase by up to 2.9°C by 2100.⁷ This is more than the previously envisaged 1.5°C, which has been considered a critical threshold for limiting the most severe effects of climate change.⁸ According to the Intergovernmental

EBRD's Paris Methodologies, while not specifically assessed in the Opinion, suffer from the same legal deficiencies as IFC's, IBRD's and ADB's Paris Alignment Methodologies.

⁶ Synthesis Report of the IPCC Sixth Assessment Report (AR6), March 2023, Summary for Policy Makers at 5-6, 12-13 (available at: www.ipcc.ch/report/ar6/syr/).

⁷ See United Nations 2023 Gap Report at: <https://www.unep.org/resources/emissions-gap-report-2023>.

⁸ IPCC (Intergovernmental Panel on Climate Change). 2018. Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty, Cambridge: Cambridge University Press; UN (United Nations). 2021. "Nationally Determined Contributions under the Paris Agreement." Synthesis Report by the Secretariat, Conference of the Parties Serving as the Meeting of the Parties to the Paris

Panel on Climate Change, this temperature rise will have devastating effects not only on ecosystems but also on human health and well-being, water, agriculture, cities, settlements, and infrastructure.⁹ People living in the Global South, and economically, politically, and socially marginalized people living in poverty, and who deal with the lasting effects of racial injustice and inequality, are likely to be hit hardest. The world and its most marginalized people cannot handle further significant GHG emissions, and especially ones that the EBRD can and has the duty to avoid.

Requests: Considering the climate crisis and EBRD’s and its member states’ legal obligations to prevent and not contribute to or worsen it, our overarching request is for EBRD and its member states to take this opportunity in approving the GET 2030 Strategy to secure a Strategy and suite of climate Policies that aligns EBRD’s pre and post financing climate change due diligence with the best available science standard and that puts an immediate halt to EBRD’s support for fossil fuel projects and associated infrastructure, consistent with international law obligations, including those detailed in the Scholar’s Opinion.

Specifically, we urge EBRD and its member state shareholders to immediately without delay or a long drawn-out process:

- 1. Assess EBRD’s and its member states’ climate change obligations under international law, release this assessment for public review and comment, and propose and adopt adjustments to EBRD’s draft GET 2030 Strategy, Paris Methodologies, Energy Sector Strategy, and suite of Policies applicable to climate change that meet EBRD’s and its member states’ climate change obligations detailed in the Scholars’ Opinion;**
- 2. As consistent with the Scholars’ Opinion, expand EBRD’s prohibited investment activities list and non-universally aligned Paris Methodologies list to exclude upstream, midstream, and downstream natural gas and other fossil fuel projects. And further, we note this action is consistent with the pledges (as signatories to the Glasgow Statement¹⁰) and or domestic policies of 31 EBRD Member States to end international finance for fossil fuels, and thus that these member states have legal obligations to not approve any Policy or the GET 2030 Strategy that allows for and does not expressly prohibit any EBRD investment in upstream, midstream, and downstream natural gas and other fossil fuel projects.**
- 3. As consistent with the Scholars’ Opinion, build legally sufficient climate change due diligence requirements around any financing for fossil fuel projects that (a) may be allowed (such as for those allowed in truly exceptional circumstances where best available science and methods conclusively demonstrate renewables cannot meet energy demand even at higher costs) or (b) may prolong the life of, incentivize, subsidize, and or lock a country into fossil fuel extraction, production, and consumption;**

Agreement, Third Session, Glasgow, October 31–November 12; UNEP (United Nations Environment Programme). 2021. Emissions Gap Report 2021: The Heat Is On—A World of Climate Promises Not Yet Delivered. Nairobi: UNEP.

⁹ IPCC. 2022. “Summary for Policymakers.” In *Climate Change 2022: Impacts, Adaptation and Vulnerability*. Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge: Cambridge University Press.

¹⁰ 31 EBRD member states (29 countries plus the European Investment Bank and European Union) that represent close to 55% of the voting power at EBRD, by signing the Glasgow Statement (or "Statement on International Public Support for the Clean Energy Transition") pledged to end new public finance for unabated fossil fuels by the end of 2022 and or have policies to end overseas support for fossil fuels.

4. **As consistent with the Scholars’ Opinion, build the following due diligence requirements based on a “best available science” standard into EBRD’s suite of policies applicable to climate change - including its Paris Alignment Methodologies, ESF, prohibited investment lists, and Energy Sector Strategy - (a) requiring the use of best available science and methods prior to financing and guarantee decisions for: Scope 1, 2, and 3 GHG emissions quantification, analyses of GHG emissions cumulative impacts and affected community impacts (including: in calculating the societal cost of carbon for each ton of GHG’s emitted, and in assessing environmental and human rights impacts, and impacts on the rights of Indigenous Peoples), and GHG emissions alternatives and mitigation analyses; (b) providing public review and sufficient opportunity to comment on these analyses prior to financing decisions; (c) requiring avoiding financing of fossil fuel projects wherever possible and where renewables - fully consistent with respect for human rights - can meet energy demand even at higher financial costs; and (d) for all other projects, requiring avoidance of GHG emissions as far as the alternatives and mitigation analysis using best available science and methods demonstrates is feasible;**
5. **As consistent with the Scholars’ Opinion, amend its Paris Methodologies and all policies to remove EBRD’s ability to defer to the countries’ desires, discretion, and plans (e.g. Nationally Determined Contributions (NDCs) or Long Term Strategies (LTS)) where EBRD’s contemplated investments are located, instead of ensuring the investment is consistent with EBRD’s and its member states’ climate change obligations.** This is critical not only in EBRD and its member states meeting their own climate change obligations, but in ensuring each EBRD investment and EBRD’s portfolio are consistent with the 1.5°C warming objective. The sum of all NDCs and LTS – which are currently are putting the world on a 2.9°C warming trajectory - fall far short of this goal needed to save the world from global warming.¹¹
6. **Initiate an official, adequately publicized period for written public comments on the full draft of any policy amendments, ensuring sufficient time for all stakeholders to meaningfully review and comment.**

EBRD, and each of its member states, must meet their due diligence and harm prevention obligations not only to prevent avoidable harms to communities and maintain accountability, but to avoid financial remedial and reputational risks that come with being held to account in various courts of law. As EBRD and many of its member states should well be aware, it is not just EBRD’s member states that can be brought into a domestic court for their decisions at EBRD to approve an investment, and or to approve a plan or policy (or fail to ensure sufficient ones are in place) that meets their harm prevention and due diligence procedural and substantive obligations. As, *Jam v. IFC* demonstrated,¹² multilateral development banks like EBRD can be held to account too.

Considering the gravity of the matter, we respectfully request that EBRD, EBRD’s Member States, and in particular EBRD’s Global North Member States with heightened climate change due diligence and harm prevention obligations take immediate actions consistent with our above six requests.

¹¹ See United Nations 2023 Gap Report at: <https://www.unep.org/resources/emissions-gap-report-2023>.

¹² *Jam v International Finance Corp*, 586 US 273 (2019).

In addition, we respectfully request that EBRD's President, Member States, Climate Directors, GET 2030 team, Office of Safeguards, General Counsel (1) meet our forthcoming meeting requests and (2) dedicate a session with CSOs at EBRD's Annual Meeting to (a) address EBRD's and its member states' legal obligations set forth in the MDB Climate Opinion and (b) detail proposed amendments to EBRD's GET 2030 Strategy, Paris Methodologies, and suite of climate Policies to meet these obligations. We would also more than welcome a meeting on these items with President Renaud-Basso if she is so inclined.

And lastly, by February 9, 2026 and after thorough consideration, we ask for EBRD's - and also its individual member states' - written responses to the Scholars' Opinion and requests in this letter.

Thank you for your consideration. We look forward to your timely response and engagement with us on these issues. Please confirm receipt of this submission, and let us know if we can provide any additional information.

Sincerely,



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Appendix A: Key Findings from Scholars' Opinion

Key verbatim findings from the [Scholars' Legal Opinion](#), that are especially relevant to EBRD (as an IFI/MDB) and its member states meeting their legal obligations across the suite of EBRD policies applicable to climate change, include the following:

International Law Governing States' Conduct as Members of IFIs in Ensuring Adequate Climate Change Policies and When Voting on Whether to Approve an IFIs Financing and Guarantees

(98) States are subject to treaty law—the UNFCCC, Kyoto Protocol, Paris Agreement [Law of the Sea]—and customary international law in their conduct as Members of IFIs. States must fulfill the obligations under both these sources of law.

(99) The ICJ, ITLOS, and Inter-American Court of Human Rights (IACtHR) advisory opinions provide an additional normative context for the international obligations of States generally, and the Major Shareholders in particular, under climate law. These advisory opinions cover not only the direct GHG emissions produced through State actions, but also all acts or omissions of States that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions, such as the ongoing production, consumption, licensing, and subsidizing of fossil fuels.

(100) The international legal obligations interpreted and clarified in these advisory opinions are therefore applicable to development projects under the purview of IFIs that produce GHG emissions. These advisory opinions clarify the international legal obligations of Member States, especially Major Shareholders who have greater historical responsibility for anthropogenic GHG emissions, greater capacity to provide climate finance, and greater voting/decision-making power in IFIs that support development projects.

(104) All member States (whether voting via a lone representative or in a constituency), particularly but not limited to Major Shareholders, should exercise this [voting] power for the purpose of ensuring that the IFIs' operations are consistent with their and the IFIs' respective international climate law obligations.

(163) Pursuant to their own treaty- and custom-based obligations, therefore, Major Shareholders, in particular, should independently evaluate the risks of harm to the climate system posed by the IFIs' operations and avoid voting in favor of development projects that undermine climate change mitigation and/or adaptation.

(3)(b)(ii) Member States are also bound by the customary legal obligations to prevent significant harm to the environment with due diligence and to cooperate. The different elements constituting the harm prevention duty, including the variable standard of due diligence, must take into account the best available science. In the context of climate change, the stringency of such standard requires States to, among others, assess the probability and seriousness of harm in the light of new scientific or technical knowledge, as well as adopt and implement appropriate rules and measures designed to reduce GHG emissions that cause significant harm to the climate system.

(104) A State's failure to take appropriate action to protect the climate system from GHG emissions—including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration

licenses or the provision of fossil fuel subsidies—may constitute an internationally wrongful act which is attributable to that State.

(2) member States of IFIs, particularly Major Shareholders, have obligations both under treaty and customary international law, to exercise their voting powers such that development projects dependent on fossil fuels are not financed while those aimed at a clean and just energy transition are supported.

(168) The Major Shareholders' due diligence conduct involves ensuring that the MDBs are not financing development projects that are likely to cause or exacerbate climate change and related harms.

(118) a State voting in favor of a fossil fuel project (or against a policy enhancing support for renewable energy projects) could be deemed to aid or assist the IFI—who also bears climate change obligations under customary international law—in committing an internationally wrongful act within the meaning of draft ARIO Article 58. An alternative application of this rule involves aid or assistance given by one Paris Agreement State party to another State party, which is also a member of the IFI. Otherwise stated, a Major Shareholder potentially incurs responsibility for aiding or assisting a borrowing State that breaches the obligation to mitigate climate change by undertaking an IFI-supported fossil fuel project.

(170) Under international law, the Major Shareholders—not accidentally, also major emitters—are especially obliged to ensure that their voting power is exercised towards the rejection of fossil fuel-based development projects and the promotion of alternative energy options that not only emit the least amount of GHGs but are also suitable to the development needs of borrowing States. IFIs' member States are further required not to finance new fossil fuel related projects or increase financing of existing ones, to prevent adverse human rights impacts on the right to life and the right to health.

(127) [Law of the Sea obligations:] These obligations entail reducing anthropogenic GHG emissions, in line with obligations of Parties to the Paris Agreement and which have a detrimental effect on the marine environment. Member States of IFI should therefore restrain from voting in favor of fossil fuel projects, to fulfill these aforementioned obligations. The broad interpretation of 'all necessary measures' in Article 194, paragraph 1 by ITLOS necessitates that these measures include Major Shareholders restraining from voting in favor of fossil fuel-based projects.

(136) To perform their climate change obligations under international law, they must avoid financing new fossil fuel projects, unless the best available science demonstrates that a given project does not lock-in the borrowing State (or any other country) to a carbon-based development pathway and can contribute to the 1.5°C goal.

International Law Governing IFIs' Conduct as International Organizations Requires IFIs' Policies, Financing Activities, and Guarantees to Meet Stringent Climate Change Due Diligence Requirements

(2) IFIs have the obligation under customary international law, as well as their respective constituent instruments, to avoid supporting development projects that result in high greenhouse gas (GHG) emissions and pose climate risks. That they have voluntarily committed to align their operations with the objectives of the Paris Agreement reinforces this point.

(43) (171) the most relevant international legal obligation applicable to IFIs—with respect to their support of development projects posing risks of climate harm—is the customary duty to exercise due

diligence in order to prevent significant harm... Complying with this duty requires IFIs to undertake appropriate measures that minimize, if not eliminate, the risk of harm to the climate system arising from the development projects they finance.

(32) IFIs must rely on and/or incorporate the best available science—as reported by the IPCC—in formulating the safeguard policies’ risk classification system applied to different development projects and, as expounded below, in determining the list of universally (non-) Paris-aligned projects. More concretely, there should be stricter requirements for, if not an outright prohibition of, fossil fuel-dependent energy projects, since current scientific knowledge shows that ‘[m]itigation includes [] reducing GHG emissions through measures such as transitioning away from fossil fuels’

IFIs are Bound by International Law to Adhere to their Own Board Adopted Policy Requirements

(60) IFIs are also subject to climate-related international obligations based on their environmental and social policies, which they are mandated to follow under their constituent instruments.

(79) the IFIs have bound themselves (and their borrowers/clients) to certain sustainability standards. More specifically, insofar as the safeguard policies are deemed to interpret the treaty-based development mandates of IFIs, the latter’s approval of a project that fails to meet the safeguards requirements can be considered a violation of an IFI’s obligations under its constituent instrument.

(97) Besides being bound by the customary harm prevention duty, therefore, MDBs have treaty-based obligations to prevent harms to the climate and other parts of the natural environment arising from their operations.

The Best Available Science Standard Applies to IFIs’ GHG Emissions Quantification, Impact and Cumulative Impact Assessments, and Alternatives Analysis Prior to IFIs’ Financing Decisions

(55) exercise of due diligence also entails using the methods based on best reasonably available science to conduct an alternatives analysis—that encompasses GHGs quantification and impact assessment—as well as enabling timely and meaningful public review by disclosing the results of such analysis.

(3)(c) An in-depth evaluation the MDB Paris Methodologies shows inadequacies potentially leading to the IFIs’ and Member States’ non-fulfillment of their international legal obligations. In addition to overly giving credence to the borrowing States’ NDCs, which may not contain decarbonization pathways aligned with the 1.5°C temperature goal, these Methodologies do not adopt the essential ‘best available science’ standard in their quantification of GHG emissions and assessment of alternatives.

(161) Considering that bearers of the customary harm prevention duty must ‘assess the possible cumulative effects of their acts and planned activities under their jurisdiction or control’, evaluation of projects’ Paris-alignment under the MDB Paris Methodologies should take into account the remaining global carbon budget, as established by the IPCC, among others.

(167) In implementation of the more stringent diligence due from IFIs, the MDB Paris Methodologies should include assessment of Scope 3 emissions, which are indirect emissions associated with the extraction and production of purchased materials, fuels and services, including transport in vehicles. These Scope 3 emissions represent the greatest amount of emissions and cutting them is crucial for keeping within then 1.5°C threshold. The inclusion of Scope 3 emissions in EIA assessments is also

increasingly well established in domestic law. Where the inclusion of Scope 3 emissions in the EIA could entail additional costs, the IFI should either perform the more rigorous assessment or assist the borrower in undertaking the same.

Legal Inadequacies of the MDB Paris Alignment Methodologies (World Bank Paris Alignment Method for Investment Project Financing (WB PA Method) and the Joint MDB Methodological Principles for Assessment of Paris Agreement Alignment of New Operations – Direct Investment Lending Operations’ (Joint Methodological Principles) (EBRD’s Paris Methodologies, while not specifically assessed in the Opinion, suffer from the same legal deficiencies)

(3)(c) An in-depth evaluation the MDB Paris Methodologies shows inadequacies potentially leading to the IFIs’ and Member States’ non-fulfillment of their international legal obligations. In addition to overly giving credence to the borrowing States’ NDCs, which may not contain decarbonization pathways aligned with the 1.5°C temperature goal, these Methodologies do not adopt the essential ‘best available science’ standard in their quantification of GHG emissions and assessment of alternatives.

(158)-(159) activities in the universally non-aligned list ‘are deemed to undermine the mitigation goals of the Paris Agreement for all intents and purposes under all circumstances and in all countries’ Given the best available science, the universally non-aligned list is too limited in its coverage. Activities involving the use and extraction of coal and peat are included, but extraction, production, and consumption of other fossil fuels such as petroleum (crude oil) are not, even though these activities undermine climate change mitigation. The list of universally non-aligned activities should be expanded to include petroleum and other fossil fuels, to create a stringent presumption against financing new fossil fuel projects, since the IPCC and the International Energy Agency (IEA) have determined that ‘continued installation of unabated fossil fuel infrastructure will “lock-in” GHG emissions’ and that new upstream oil and gas projects are unnecessary to achieving the collective temperature goal.

(161) As international economic organizations, MDBs consider both scientific and economic data to assess if the proposed project will help the country’s low-carbon development. However, the methodologies’ undue emphasis on alignment with a country’s NDCs or long-term strategies (LTSs), coupled with the fact that the borrower takes the lead in providing information to the MDB, would probably fall short of compliance with the Paris Agreement’s objectives, especially the temperature goal, as most NDCs and LTSs are currently not aligned with the necessary decarbonization pathways to fall within the 1.5°C threshold. Considering that bearers of the customary harm prevention duty must ‘assess the possible cumulative effects of their acts and planned activities under their jurisdiction or control’, evaluation of projects’ Paris-alignment under the MDB Paris Methodologies should take into account the remaining global carbon budget, as established by the IPCC, among others. Under exceptional (region-specific) circumstances, MDBs and/or the Major Shareholders may need to prioritize climate considerations over economic factors by insisting support for less carbon-intensive alternatives even when they may have higher costs and/or potential obstacles regarding technical feasibility.

(162) The discretion States have to determine their development pathways is circumscribed by their international legal obligations, interpreted in the light of the country ownership principle in development finance that has partly similar implications as the climate regime’s CBDR-RC principle. The MDB Paris Methodologies’ recognition of State discretion should not mean that MDBs must defer to borrowing States’ NDCs, LTSs, or other national plans. Rather, the measures appropriate and necessary for IFIs to undertake as part of their customary preventive obligation include independently evaluating the risks of harm posed by IFI-supported operations to the climate system. Further, the IFIs must avoid financing

development projects that undermine climate change mitigation and/or adaptation, lest such financial support causes breach of international legal obligations on the IFIs' part, of borrowing countries, or of other member States such as the Major Shareholders.

(164) In their current version, the MDB Paris Methodologies can be found inconsistent with the IFIs' customary obligation to diligently prevent harm to the climate system, because contrary to the best available scientific information, these instruments permit the possibility of funding fossil-fuel (oil and gas) projects. Granted, by evaluating the carbon intensity of operations to be financed by the MDBs, as well as the energy transition risks of development projects, the MDB Paris Methodologies serve as the climate risk and impact assessment necessitated by the customary rule. However, these methodologies' level of comprehensiveness does not seem commensurate with the stringency of due diligence required in the climate change context and with IFIs' considerable resources that translate to greater harm preventive capacity.

(55) exercise of due diligence also entails using the methods based on best reasonably available science to conduct an alternatives analysis—that encompasses GHGs quantification and impact assessment—as well as enabling timely and meaningful public review by disclosing the results of such analysis.

(165) The Joint Methodological Principles provide that the MDBs' expert judgment will be 'based on available information ... and they are likely to be revised in the future, reflecting the evolving body of scientific and economic information available to the MDBs and their clients'. This statement, however, does not clearly make it mandatory for MDBs to use the best available science in assessing the Paris alignment of a project. Where the MDB Paris Methodologies also appear to fall short concerns the public disclosure of evaluations and meaningful consultation with stakeholders, including concerned civil society organizations.

(167) In implementation of the more stringent diligence due from IFIs, the MDB Paris Methodologies should include assessment of Scope 3 emissions, which are indirect emissions associated with the extraction and production of purchased materials, fuels and services, including transport in vehicles. These Scope 3 emissions represent the greatest amount of emissions and cutting them is crucial for keeping within then 1.5°C threshold. The inclusion of Scope 3 emissions in EIA assessments is also increasingly well established in domestic law. Where the inclusion of Scope 3 emissions in the EIA could entail additional costs, the IFI should either perform the more rigorous assessment or assist the borrower in undertaking the same.

(169) To conclude, because they do not rely on the best available science, which provides evidence for including in MDBs' universally non-aligned list such projects that use or depend on other fossil fuels (e.g. petroleum) besides coal, the MDB Paris Alignment Methodologies are potentially inconsistent with the respective climate-related customary obligations of IFIs and member States. Major Shareholders that rely on these methodologies in their decision making also risk violating their treaty-based climate obligations, including to provide climate finance that supports mitigation and adaptation.

(172) without correcting these methodologies' failures to rely on the best available science and to enhance support for less carbon-intensive alternative projects, the IFIs and the Major Shareholders are not acting with the requisite stringent due diligence in the context of climate change.