



EURODAD Charter on Responsible Financing

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This Charter on Responsible Financing has been written by the European Network on Debt and Development (Eurodad). It outlines the essential components of a responsible loan and demands that lenders and borrowers sign up to the standards advocated in the Eurodad Charter.



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PREAMBLE

The history of the sovereign debt crisis since the 1980s has shown that loans have often been extended to developing nations with insufficient regard for the rule of law or citizens' welfare. In many cases, loans were used to buy political support or to fund non-viable projects. Citizens around the world demand the productive and transparent use of financial resources. To prevent repeated rounds of unsustainable and irresponsible lending and borrowing, it is essential to reform current approaches to sovereign lending. We therefore demand that lenders and borrowers sign-up and adhere to the following EURODAD Charter on Responsible Financing.

A. TECHNICAL AND LEGAL TERMS AND CONDITIONS

A. (i) ALL LOANS:

- 1. Purpose and amount of loan:** The loan document must state clearly the purpose, amount and beneficiaries of the loan.
- 2. Mutual obligations and predictable disbursement:** The borrower commits to spend the funds as stipulated in the loan agreement. The lender commits to deliver the funds predictably as stated.
- 3. Compliance with relevant national and international laws:** The parties to the loan must comply with relevant national laws and regulations in the borrower and lender nations. Loans should not be exempted from the responsibilities and accountabilities demanded by national law in the borrower or lender nation. Disregard for applicable laws can render any later claims invalid.
- 4. Legal authorisation to enter into the transaction:** The loan document must be signed by authorised representatives of both borrower and lender. It must show that it has secured the necessary parliamentary and/or other administrative approvals in the borrower country (see C(i)).

5. **Repayment assumptions:** The borrower government and lender must make public the economic 'assumptions' they have made in relation to how the loan is to be repaid, such as the financial position of the borrower and expected rate of return on activities financed.
6. **Interest rates:** The loan document must indicate clearly the type and level of interest rates charged (fixed or variable rates). If variable interest rates are chosen, rates must be given a reasonable and fair upper limit which must be stated in the contract. This offers more predictability and certainty to both parties to the contract. A reasonable upper limit would be 1% above the basic market rate in the lender nation.
7. **Repayment profile:** The contract must provide clear information on grace and maturity periods, and repayment profiles (date and amount of debt service).
8. **Penalties:** There should be no usurious penalty premiums. These should be set at the same rate as the original interest rate, for example if the original loan carries an interest rate of 3%, the penalty premium should carry a maximum interest rate of 3%.
9. **Side-letters:** All details in relation to the loan must be contained within one document. Side letters are not permitted.
10. **Fees and charges:** The loan document must contain detailed figures and information of any fees charged as part of the transaction (including recipient(s) and purpose(s) of fees). Any such fees should be charged at no more than international market prices for such goods or services.
11. **Conflict of interests:** The loan document should also spell out any additional role the lender has played in relation to the loan, e.g. if it has acted as advisor/consultant to the borrower in addition to its role as lender. The details of this advice should be public and available on demand.

12. Sale of loan on secondary market: To prevent aggressive actions by litigating creditors, the loan should restrict the creditor's right to assign the debt to another party, i.e. the lender cannot unilaterally sell or assign the debt to other entities. The lender must first obtain the free and informed consent of the borrower. In the event the debt is sold-on, assigned, transferred, restructured or replaced with a successor loan, all provisions as outlined in the original loan agreement apply, such as the provision for independent arbitration and change of circumstance.

A. (ii) DEVELOPMENT LOANS:

13. Aid effectiveness and poverty focus: Loans that are considered "development loans" must be fully in-line with country-designed development strategies and debt policies. They must respect the key principles of the Paris Declaration on Aid Effectiveness.

14. Currency of the loan: Official lenders should offer the possibility of borrowing all or part of the loan in local currencies to help balance exchange rate risk.

B. PROTECTION OF HUMAN RIGHTS AND THE ENVIRONMENT

B. (i) ALL LOANS:

- 1. Respect for human rights:** Activities financed must not violate human rights and must not contribute to the violation of human rights. These rights are set out in the internationally recognised human rights treaties and conventions to which either borrowers or lender is signatory.
- 2. Needs assessment:** The borrower should provide clear documentation or other evidence which identifies the need for the loan.

3. **Ex ante impact assessment:** The lender has a fiduciary responsibility to ensure that activities financed are legal and viable, as attested by an independent ex ante long-term integrated impact assessment. The lender and borrower should jointly appoint someone who will carry out the ex ante assessment. The loan contract should state who bears the costs of possible risks associated with the project as identified in the ex-ante assessment.
4. **Respect for internationally recognised social, labour and environmental standards:** The loan must not support any venture that contravenes internationally accepted minimum standards on social, labour and environmental protection.

C. PUBLIC CONSENT AND TRANSPARENCY

C. (i) ALL LOANS

1. **Parliamentary and citizen participation:** The loan contraction process must be transparent and participatory, i.e. parliaments and/or citizens and affected communities in the borrower nation must be given adequate time and information to debate the taking-on of the loan, including purpose, terms and conditions of the loan in accordance with the national constitution.
2. **Public disclosure of information:** The loan contract must be available to the public in borrower and lender nations (e.g. transmitted to parliament, available for consultation on request, published on the web, announced in the national press, radio and/or television as appropriate).
3. **Language:** The contract must be available in the main national languages (including the language(s) of affected communities) of the debtor nation. Both original and translated versions should have equal validity in a court of law.

C. (ii) PROJECT LOANS

- 4. Progress reports and loan evaluation:** For project loans, there should be regular (e.g. biannual or annual as appropriate) progress reports. There should be a clear timetable for completion of the project. There should be independent and timely evaluation and audit of project loans. Project reports and evaluations must be public.

D. PROCUREMENT

D. (i) ALL LOANS

- 1. Public procurement:** Government procurement processes must be open and transparent. The loan contract should carry clear details of tendering processes for those carrying out any work or providing any services.
- 2. Agreements between borrower and lender:** The loan must contain details of any host government agreement, production-sharing agreement, power purchase agreement or any other similar accord. It must also contain details of any agreement to repay the loan in goods or services provided by the borrower as well as state clearly the basis for the valuation of these goods or services. Similarly, if the purpose of the loan is the provision of goods or services by the lender, the loan document must clearly state how such goods/services have been valued.
- 3. Immunity:** To ensure that service providers are fully accountable, there should be no clauses in loan agreements which give legal immunity for violations of the law in borrower and lender nation to those carrying out any services or work as part of the contract.

- 4. Local capacity-building:** Procurement procedures should support the capacity-building of local companies and institutions in line with international agreements and commitments in this regard.

D. (ii) DEVELOPMENT LOANS

- 5. Development loan tying:** development loan contracts should not be tied to the purchase of goods or services from the lender.

E. REPAYMENT DIFFICULTIES OR DISPUTES

- 1. Change in circumstance:** The loan must recognise that there will be cases where a dramatic change in circumstances – beyond the will of either borrower or lender – means that the borrower is no longer able to meet its financial obligations on the loan. The contract should state clearly what happens in such circumstances and should allow for a modification of the terms of the agreement. The borrower must provide clear evidence which demonstrates that it is not able to meet its financial obligations on the loan.
- 2. Independent arbitration:** The loan document should provide a provision for an independent and transparent arbitration procedure in case of repayment difficulties or dispute (at the request of borrower or lender). There will be a stay on debt repayments while negotiations are underway. The borrower will also be protected from litigation while negotiations are in progress. Borrowers and lenders will abide by the decision of the independent arbitrator and there is a right to appeal.
- 3. Legal authorisation to negotiate:** Proof of legal power of attorney and negotiation must be provided by both sides of the contract before commencement of any negotiations on the loan.

4. **Loan refinancing:** The details of any restructuring/ refinancing agreement must be made public. Any successor loan carries with it the properties of the original loan. Borrowers should not sign sovereign immunity waivers when debts are sold-on.
5. **Cross-default:** The loan document must not contain any cross-default or similar clause.
6. **Termination of the contract:** There must be clear, fair grounds and requirements for nullification/termination of the contract by either party.

* There is an extended version of this Charter available. To read the full paper, see: www.eurodad.org

ABOUT EURODAD:

EURODAD (the European Network on Debt and Development) is a network of 54 non-governmental organisations from 17 European countries who work together on issues related to debt, development finance and poverty reduction. The Eurodad network offers a platform for exploring issues, collecting intelligence and ideas, and undertaking collective advocacy.

Eurodad's aims are to:

- Push for development policies that support pro-poor and democratically defined sustainable development strategies
- Support the empowerment of Southern people to chart their own path towards development and ending poverty
- Seek a lasting and sustainable solution to the debt crisis, promote appropriate development financing, and a stable international financial system conducive to development

More information and recent briefings are at: www.eurodad.org