

Comments on the EBRD Environmental and Social Policy

Submitted by the Bank Information Center

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The Bank Information Center (BIC) welcomes the EBRD's revision of the 2003 Environmental Policy to respond to environmental and social challenges, provide greater clarity on Bank project requirements, and reflect current international best practices. We are pleased to provide comments on the EBRD's draft *Environment and Social Policy*, and we hope that EBRD will carefully consider these and other comments from civil society in the revised draft that it submits to the Board.

Generally, BIC considers the draft Environment and Social Policy a significant improvement over the 2003 Environmental Policy, especially with regard to the more comprehensive social safeguards embodied in the new proposal. We think that the new Performance Requirements, which are modeled after those adopted by the International Finance Corporation (IFC) in 2006, are a useful way to elaborate the EBRD's commitments on social and environmental outcomes and the actions that its clients must take to ensure those outcomes.

At the same time, we find some important shortcomings in the new Policy. First, it does not reflect a sense of urgency about the problem of climate change and the implications of that problem for its investment priorities in the future. Second, it does not elaborate requirements for projects in specific economic sectors which are usually accompanied by special environmental and social concerns. We are providing comments on the need for special requirements for extractive industries projects, which have implications for both climate change and governance. More generally, we note a need to clarify or strengthen the language of the Policy to more clearly define the commitments undertaken by the EBRD and the requirements that are to be accepted by its clients. We have highlighted provisions from the general policy statement, the indicative list of A-level projects and Performance Requirements 1, 6, 7 and 10 that we think could be improved with clearer or stronger language.

Comments and Recommendations

Climate Change

In its comments on the Environmental Policy Discussion Paper, BIC urged EBRD to adopt a new strategic direction to the Policy that would commit the EBRD to focus its overall investment portfolio on the transition to a low carbon economy, by phasing out the use of fossil fuels. In its draft policy, EBRD acknowledges the importance of climate change, but puts off to the future concrete steps, noting its intention "to further develop its approach towards climate change."

Given the urgency of the problem of climate change, we think that the EBRD is missing an important opportunity to initiate steps to reduce greenhouse gases produced by its operations. The urgency of the problem is now widely accepted by national governments and international

institutions. The report released by the Inter-governmental Panel on Climate Change (IPCC) in 2007 contained strong evidence that negative impacts from climate change are already occurring and faster than originally thought. The IPCC estimated that “global mean losses could be 1-5% GDP for 4 degrees Celsius” and the “developing countries are expected to experience larger percentage losses.” In addition to all the governments that have ratified the Kyoto Protocol, many international financial institutions have made commitments to focus institutional investment on the transition to a low carbon economy, including the World Bank (Clean Energy for Development Investment Framework), Asian Development Bank (Medium-Term Strategy & new draft Energy Strategy), and Overseas Private Investment Corporation (OPIC). The EBRD needs to join international best practice and ensure its strategic direction for overall investment is to support the transition to a low carbon economy.

Addressing the issue of climate change should be an integral part of the EBRD’s new Environmental and Social Policy. It has implications for the priorities that the Bank sets for its investments and the environmental standards it sets for its operations. In particular, it implies the need for an expansion of the EBRD’s investments in renewable energy and energy efficiency projects and a phasing out of fossil fuel projects.

Sector Specific Requirements for Extractive Industries

As the EBRD’s sector policies do not specifically focus on social and environmental protections, it is necessary for the new Environmental and Social Policy to contain sector-specific requirements to supplement and strengthen sector policies. This is essential for the EBRD to adequately and appropriately address and protect social rights and the environment. Such sectors as extractive industries, energy, and infrastructure, should have sector specific social and environmental requirements.

With regard to the extractive industries, the EBRD should adopt the recommendations stemming from two extensive multi-stakeholder consultations - the World Bank Group’s Extractive Industries Review (EIR) and the Canadian Government’s National Roundtable Discussions on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries. These consultations included stakeholders from governments, industry, academia, local communities, and local/international civil society organizations. Recommendations from these consultations that should be adopted include:

- To further a new EBRD strategic direction to promote transition to a low carbon economy, it will be critical that the new Policy requires all proposed extractive industry (especially oil-, gas-, and coal-related) projects to conduct and adequately consider other options provided by analysis of development alternatives, especially analysis of opportunities for renewable energy development. Furthermore, where private finance is available, which is generally the case for oil and gas, the EBRD should not be involved.
- Adopt explicit core and extractive industries-specific governance requirements/indicators that must be met before a project qualifies for EBRD funding.

- Under no circumstances should EBRD support extractive industry projects in areas involved in, or at high risk of, armed conflict;
- Ensure free prior and informed consent for indigenous peoples and local communities affected by oil, gas, and mining operations and before any resettlement takes place;
- Require upstream social and environmental analyses for all policy advice, technical assistance and analytic/advisory activities (e.g., privatization, new contract models like production sharing agreements);
- Adopt clear no go zones and do not finance any extractive operation that might affect existing World Heritage properties, current official protected areas, or critical natural habitat, or areas planned in the future to be designated;
- Require emergency response plans as a precondition of EBRD funding;
- Require public disclosure of all revenues and investment contracts (see details below);
- Do not support projects that undermine or are inconsistent with international human rights law;
- Create a central Human Rights Unit to monitor, verify and conduct annual audits; and

Revenue and Contract Transparency for Extractive Industries

The EBRD's Energy Operations Policy, approved in 2006, addressed some of the revenue transparency issues, but left significant gaps. The new Environmental and Social Policy should make specific new commitments to revenue and contract transparency.

- The Energy Operations Policy specifies revenue transparency requirements only for oil and gas upstream subsectors. The EBRD has no explicit transparency requirements for the oil and gas midstream or downstream subsectors¹ or for the metals mining sector. The new environmental policy should require public disclosure of all revenue payments (including royalties, taxes, commodity based payments, signing bonuses etc.) made to governments and their agents by all oil, gas, and mining projects that receive the financial support of the EBRD, including those made via financial intermediaries.
- The Energy Operations Policy does not require transparency for investment contracts. It only refers generally to IMF recommendations as an example of best international practices for revenue management. The IMF's Guide on Resource Revenue Transparency (June 2005) states that good practice requires that all signed contracts are publicly disclosed. In addition,

¹ The oil and gas upstream subsector includes extraction processes. The midstream subsector includes transportation infrastructure (pipelines, ports), processing facilities (LNG terminals), and storage facilities. The downstream subsector includes refineries and distribution networks.

both the EIR and the Canadian Roundtables recommended contract disclosure. The EBRD should clearly require disclosure of key contractual agreements for all oil, gas, and mining projects that it finances.

- The Energy Operations Policy does not specify reporting formats or the timeframes for reporting. The new Environmental and Social Policy should require semi-annual revenue disclosure for the life of the project. Disclosure should be in local languages and in locations that are easily accessible to both the local and national public.

Selected Provisions that Should be Clarified or Strengthened

Categorization. Paragraph 21, which describes Category B projects, lacks a provision for participatory environmental and social assessment or for third-party appraisal and input. Since certain Category B projects may be nearly as dangerous as Category A projects, third-party stakeholders should be able to participate in the E&S Appraisal and provide input to ensure appropriate categorization and adequate ESAP. Results of the IESE should also be disclosed to the public to assure that affected communities and other interested parties agree with the categorization decision.

Monitoring. It is reassuring that EBRD ensures regular monitoring of ESAP implementation by its clients as outlined in paragraph 36. However, it is crucial that the Bank shares the results of the monitoring with the public, not only with the client. From the standpoint of civil society such public reporting would reinforce the credibility of “periodic third party monitoring” and other project reviews.

Appendix 1. Category A Projects. The criteria for Category A projects contain excessively general terms and provisions and are not adequately defined. For example, it is not clear what constitutes “large scale” logging or land reclamation. In other cases, the criteria appear arbitrary: for example, a coal liquefaction facility producing 470 tons/day (30 tons/day less than specified for a Category A project) would automatically fall under Category B project with much less stringent environmental and social assessment requirements.

Performance Requirement 1: Environmental and Social Appraisal and Management. Paragraph 20 on Performance Monitoring and Review rightly obliges the client to monitor its compliance with social and environmental provisions and, for Category A projects, perform audits, drawing upon inspections and community feedback. The requirement would be more effective, however, if the client were required to disclose the results rather than merely document them.

Performance Requirement 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources. Paragraph 11, related to the Protected and Designated Areas, should require better protection for such areas. In certain cases, local legislation or compliance criteria may not be sufficiently developed to protect special areas. In such cases, EBRD should demand more stringent international norms. In addition, compared to similar IFC provision, this

paragraph lacks vital requirement to consult key stakeholders, such as local communities and managers of protected and specially designated areas.

Conditions and exceptions guiding preservation of natural habitats in paragraph 14 are unduly weakened with ambiguous reservations such as “The overall benefits of the project outweigh the costs, including those to the environment and biodiversity”. It is not clear whose benefits are being compared to the costs to the environment and biodiversity.

BIC welcomes EBRD’s decision to include safeguards regulating the use and release of Genetically Modified Organisms. It is also reassuring that, in the Sustainable Management and Use of Natural Resource section, EBRD requires consideration of the cumulative impacts of the projects it sponsors, advocates for a precautionary approach and expects sustainability through the stages of processing in industries such as fishing. At the same time, EBRD could further strengthen its Environmental and Social Policy if explicit requirements for sustainable and transparent practices were similarly demanded throughout the value chain process in other industries, especially in extractive projects.

Performance requirement 7: Indigenous Peoples. Paragraphs 3 and 4 of the performance requirement properly highlight the need for a highly gender-sensitive approach in assessing impacts on indigenous people and recognize the right of prior and informed consent to projects that affect them. The bank, however, should ensure *free*, prior and informed consent of indigenous to all types of projects, not just certain projects.

Paragraph 13 should also include “when avoidance is not feasible, the client will minimize, mitigate or compensate for these impacts in a culturally appropriate manner” to appropriately complete grievance and compensation provisions.

Paragraph 20 needs a clearer description what Indigenous Peoples Development Plan involves, including benefit and compensations, participatory process, grievance mechanisms etc. We support other requirements such as retention of qualified social scientists, time-binding IPDP development and participatory nature.

BIC however is concerned with the revision in current draft that omits important language (italicized) in Paragraph 20 that was present in the issue paper published in early 2007. The previous sentence read:

“The process will ensure their free, prior, and informed consultation in order to facilitate their informed participation on matters that affect them directly, *such as the decision as to whether or not to proceed with the project*, proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.”

Diluting this paragraph in such way, may compromise a client’s perception of the importance of engaging meaningfully with the indigenous peoples.

The Compensation and Benefit Sharing section implies that, by default, compensation will be paid directly to regional or local government unless it is deemed that the government’s use of funds to benefit Indigenous Peoples is questionable. BIC believes that nature of good faith negotiations necessitates leaving the choice of how and to whom compensation is made to Indigenous Peoples.

Provision for relocation of Indigenous Peoples described in paragraph 34 and 35 should delineate what constitutes “feasible alternative project designs” to relocation. For example, to what extent would higher costs or implementation delays determine whether alternative are feasible?

Performance Requirement 10: Information Disclosure and Stakeholder Analysis. Paragraph 15 on meaningful consultation needs a clearer stakeholders' identification and notification process. It should also note what relevant documents should be made available for public to ensure community members are sufficiently informed. These could include, for example, any preliminary Environmental and Social Appraisals, prior third party environmental audits or any grievance mechanisms. Public announcements should be made in major media outlets and at least two months in advance.

Inclusion of the paragraph on corporate finance is an important improvement of EBRD’s Policy given the number of equity investments the bank makes in the extractive industry. There is no clarity, however, on what constitutes a proximate community to the client’s facilities. The disclosure requirement applies only to the ESMS/ESAP. Both direct and indirect investment projects should be required to disclose revenues and any payments made to government, especially for projects in extractive industries.

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