

## **CEE Bankwatch Network comments on the EBRD implementing procedural provisions for information requests and appeals**

*December 4, 2006*

CEE Bankwatch Network offers its comments on the European Bank for Reconstruction and Development's "Draft implementing procedural provisions for information requests and appeals." We acknowledge the EBRD's commitment to nuance issues associated with the revised Public Information Policy (PIP), and we are convinced that the adoption of procedural provisions and clarifications about what information the EBRD defines as confidential will move the EBRD another step towards transparency and good governance.

While we appreciate that the EBRD has adopted some of our recommendations submitted during the PIP commenting period earlier this year - specifically proposals for concrete mechanisms and timelines to process information requests and appeals - we feel that a policy premised on genuine principles of open access to information and accountability was not created. The lack of an independent information requests appeal function and formal restrictions on free access to information are tangible evidence of the principal shortcomings of this draft. The comments on the procedural provisions presented below are meant as guidance to the Bank for improving its dialogue with stakeholders and raising the effectiveness of its day-to-day operations.

### **1. Making a request for information**

As stated in the PIP, disclosure at the EBRD is formally driven by the presumption of disclosure in the absence of compelling reasons for confidentiality. Accordingly, we reiterate that the EBRD should proactively disclose publicly available project-specific and institutional information to avoid misleading interpretations of and irrelevant requests for information from the PIP and its functions..

#### **1.1. Contact point**

We compliment the EBRD for establishing a central contact point<sup>1</sup> for receiving information requests. This will likely simplify the process of submitting information queries of general character and those in which appropriate contact persons are unknown. However, this central contact address must not discourage stakeholders from contacting EBRD staff directly. In order to preserve reliable and open communication between the EBRD and the public, the EBRD should disclose contact information for all staff and encourage stakeholders to submit information requests directly to the relevant officials.

The draft provisions appoint Resident Offices to act as alternate contact points for receiving information requests. However, we are apprehensive of this proposal based on previous experiences with Resident Offices approach to public queries and the fact that

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<sup>1</sup> EBRD Communications Department, E-mail: [info@ebrd.com](mailto:info@ebrd.com), Fax: +44 207 338 6102

current EBRD disclosure practices do not make available e-mail contacts of its Resident Offices.<sup>2</sup>

The draft provisions fail to explain adequately the roles of the Communications Department and Resident Offices. The EBRD should ensure that the Communications Department and Resident Offices function solely to mediate communication between the public and the relevant staff in position to answer the query. The Communications Department and Resident Offices should respond only to queries of general character where no professional insight is needed.

- ✓ The text of the procedural provisions should encourage stakeholders to submit information requests directly to relevant EBRD officials by disclosing contacts to its entire staff, including the Executive Directors and business departments.
- ✓ The EBRD should disclose the e-mail contact information for Resident Offices to enable electronic communication between the offices and the public.
- ✓ The Communications Department and Resident Offices should function solely to mediate communication with the public and provide responses only to such queries where professional insight is not needed.

## **1.2. Languages**

We recognize that the EBRD was mindful of the non-English speaking public in the countries of its operations by enabling information requests to be submitted in English, Russian, German and French. This provision is especially important in case of Russian speakers. We understand that the provisions will also require that EBRD responds in language of the inquiries.

- ✓ The EBRD should respond in the same language as the information inquiry, provided this is one of the four working languages.

## **1.3. Acknowledgement of requests**

We are pleased that the EBRD will acknowledge receipt of requests for information; in order to enhance this provision's implementation, the acknowledgments should indicate the name of the department and the staff member responsible for preparing the reply.

We welcome the proposed five-day timeline for providing acknowledgements of having received information requests. However, the draft provisions lack a clear timeline for queries submitted in foreign languages. We suggest that a timeline of five days is set up for acknowledging receipt of foreign language requests for information.

- ✓ The acknowledgments should indicate the name of the department and the staff member responsible for preparing the reply.
- ✓ The Bank should acknowledge receipt of a request for information submitted in one of the working languages within five days.

## **1.4. Decision**

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<sup>2</sup> <http://www.ebrd.org/about/contacts/local.htm>

The draft provisions commit the EBRD to respond no later than 20 working days after receiving the request for information, with the possibility to extend the timeline to 40 working days when clarification from the client is required. To our view, such long period for responding is a non-standard practice in any business or professional communication. We therefore suggest the period designed for responding to information requests is 15 working days, with a possibility of extension to 30 working days<sup>3</sup>.

The extended timeline should be applicable to cases only in which the inquiry requires additional expertise, and should a delay be necessary, the EBRD should inform the applicant as soon as possible, and no later than ten working days following receipt.

If the requested information is not provided, the EBRD should indicate the specific provision of the relevant Bank policy that justifies such refusal. If requested information has already been released by a third party or is in its possession, the EBRD should inform the applicant how to obtain the requested information, by providing the applicant with full contact details to this third party.

- ✓ The EBRD should respond to information requests within 15 working days, with a possibility to extend this period to 30 working days in case of complex inquiries.
- ✓ The EBRD should inform the applicant as soon as possible and no later than ten working days following receipt in case it is unable to respond to the information request within 15 working days.
- ✓ In the case of refusing disclosure, the EBRD should indicate the specific provision from the relevant EBRD policy or procedure as justification.
- ✓ If the requested information has already been released by a third party or is in its possession, the EBRD should inform the applicant how to obtain the requested information by providing the full contact details for the party.

### **1.5. Format**

The correspondent should be able to decide in which format she or he wishes to receive the requested information (electronic, paper, full length or summary). If information in a document is deemed confidential in accordance with the PIP, the EBRD is encouraged to release the full document and remove only confidential information.

### **1.6. Implementation**

To ensure that the procedural provisions are effectively implemented, the EBRD should instruct its staff about the new procedural provisions once they take effect. The Bank is complimented for committing to reflect regularly on their implementation in the EBRD's annual PIP implementation reports. If the implementation reports are to offer any meaningful review, they should focus on the *quality* of the implementation rather on the *quantitative* nature of staff compliance with the procedures.

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<sup>3</sup> This is in line with the recommendations of the Global Transparency Initiative's (GTI) Transparency Charter for International Financial Institutions, available online from the GTI's website: [http://ifitransparency.org/activities.shtml?x=44474&als\[select\]=44474](http://ifitransparency.org/activities.shtml?x=44474&als[select]=44474)

The EBRD might also consider developing a system of staff incentives or on the other hand a system of alerts to ensure compliance with the PIP.

- ✓ The EBRD should instruct its staff of the new procedural provisions and report on *quality* of its implementation in the EBRD's annual report on the implementation of the PIP.

## **2. Appealing against denied requests**

### **2.1. Languages**

Similar to section 1.2 above, the EBRD should ensure that the Secretary General responds in the relevant language of the appeal.

- ✓ The EBRD should answer in a language of the appeal, provided this is submitted in one of the four working languages of the EBRD.

### **2.2. Decision**

We understand that those who feel that a request for information was not dealt with by the EBRD in accordance with the standards and procedures of its policies are able to submit a complaint to the Secretary General and in project-related cases to the Independent Recourse Mechanism (IRM). While we welcome the possibility for two different paths through which to appeal, we still believe the current setting does not allow for true accountability in disclosure related appeals.

As the Secretary General processes complaints on non-compliance with a policy that he himself had designed and handles appeals of which he himself might be an object, the independence of appeals process is jeopardized. Moreover, two recent complaints submitted to the IRM regarding the PIP non-compliance clearly demonstrate that the IRM is not an appropriate substitute for an independent body that handles appeals related requests for information. It is essential that the role of the IRM is enhanced to oversee appeals to refusal of information disclosure to handle appeals where a conflict of interest is at risk.

- ✓ The EBRD should enhance the role of the IRM to oversee disclosure of information in cases where conflicts of interest are at risk.