

# **Considerations in Establishing an Independent Accountability Mechanism at the European Bank for Reconstruction and Development**

**Center for International Environmental Law**

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## **Background**

In recent years, a growing understanding of the importance of listening to the concerns of locally affected communities in achieving sustainable development has led to significant advances in the development of environmental and social safeguards at almost all of the multilateral development banks (MDBs), including the EBRD. Over time, however, it has become clear that policy reforms alone will not ensure that the legitimate interests and concerns of locally affected communities are heard by decision-makers at the MDBs. Because of these concerns, the World Bank established an Independent Inspection Panel in 1993.

That was followed over the next few years by the creation of inspection functions at the Asian Development Bank (ADB) and the Inter-American Development Bank (IDB) and a Compliance Advisor and Ombudsman at the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). Even the African Development Bank has considered a proposal for creating an accountability mechanism.

In the past decade, these independent accountability mechanisms have emerged as an essential component of any MDB's pursuit of sustainable development. From the experiences gained from the existing accountability mechanisms (both good and bad), we can conclude that for an accountability mechanism to be effective it must be:

- Transparent - it must allow for all claims and the results of any claims to be made available to the claimants and to the public before any final decision is made;
- Independent - it must function independently from the Bank management and staff;
- Citizen-Driven - it must be initiated and driven by locally affected people or their representatives;
- Accessible - it must be both simple, clear and efficient in its operation;
- Empowered - it must have the power not only to investigate, but also to provide recommendations and monitor implementation of any subsequent decisions.

The following suggestions are offered with the goal of assisting the EBRD to create an accountability mechanism that meets those criteria, while taking into account the specific nature of the EBRD.

## **Function and Authority**

The EBRD Accountability Mechanism should have the following authority:

- To receive, evaluate and investigate all claims filed to it from locally affected people or their representatives;
- To make recommendations based on their evaluation and investigation of specific claims, including recommendations on how to ensure compliance with EBRD policies and EU standards, where applicable;
- To monitor implementation of decisions made by the Board of Directors in response to specific claims;
- To make general recommendations regarding Bank operations and policy compliance in light of the experience gained over time;
- To generally promote public awareness of the Accountability Mechanism and the Bank's operational policies.

This set of functions would be an improvement over the existing World Bank Inspection Panel, which is not authorized to make specific recommendations or to monitor implementation of claim-related decisions. Limiting the accountability mechanism to fact-finding alone limits its usefulness not only to affected communities but also to the Bank and the Board of Directors. The IFC ombudsman enjoys greater authority to make recommendations and seek solutions, a responsibility that has served both the claimants and the institution well.

### **Composition**

The EBRD Accountability Mechanism should be composed at least one full-time chairperson, supported by permanent staff independent of Bank Management. There should also be a roster of investigators who can be called on by the chairperson as required. In addition to responding to specific claims, the Chairperson should be charged with promoting and explaining the Accountability Mechanism, both inside and outside the Bank.

The World Bank's Inspection Panel has three members, each of whom serve five-year terms. The chairperson is full-time, while the other members are compensated only to the extent that they are called on to work. This arrangement has worked substantially better than the approaches used by both the IDB and ADB mechanisms. Those mechanisms do not have a full-time Panel member, but rely instead on a lengthy roster of people who have been identified as being qualified and available, if necessary. Then a group of investigators is empanelled whenever a claim is filed. The roster approach, although arguably less expensive, has clearly not worked well. A full-time Panel member is required to facilitate on-going dialogue with affected communities and to otherwise increase public awareness of the Accountability Mechanism.

The Chairperson of the Accountability Mechanism along with the roster members shall be selected by the Board of Directors based on the recommendation of an outside, multi-stakeholder steering committee (including both NGOs and private sector representatives). The model used by the IFC in selecting their first ombudsman is a good precedent. Members of the Accountability Mechanism should report to the Executive Directors and be removable from office only by decision of the Executive Directors, for cause.

To ensure independence of the Accountability Mechanism, neither the chairperson nor any member of the roster should have served as a staff member of the EBRD for at least two years preceding their selection,

and shall be forbidden from working at the EBRD again after their tenure. This provision covers the World Bank Inspection Panel

## **Budgeting**

The Board of Directors should approve the Accountability Mechanism's budget in an amount sufficient to ensure the independent and effective operation of the Mechanism.

## **Claims**

The Accountability Mechanism shall receive requests from one or more locally affected people or their representatives alleging harm from a project being planned or currently financed or guaranteed by the EBRD. Requirements in the claim should be as simple and minimal as possible. The Accountability Mechanism should, for example, be authorized to identify potential policy violations even if the affected community/claimants are not able to cite EBRD policies.

Although the World Bank Inspection Panel's rules require the claimant to identify policy violations, in practice the Panel has emphasized the requirement to show actual harm by the proposed project and de-emphasized the need to tie such harm to specific policy violations. This is necessary because otherwise the only claims that could be filed would be those in which locally affected communities had access to legal or other expertise relating to bank policies. This restricts the role of the Accountability Mechanism too much. The IFC ombudsman's office recognized this early on and does not require a claimant to identify any policy violation in order to file a petition to that office.

## **Investigation Schedule**

Given the private sector nature of much of the EBRD's operations, the Accountability Mechanism must run efficiently and in a timeframe that does not unreasonably interfere with the private sector project cycle. These concerns must be balanced with the needs to conduct a full and adequate investigation into any eligible claims. Strict adherence to the following timeframes should help to ensure this balance.

- The Accountability Mechanism should inform the claimants, EBRD management and any project sponsor within five days of receiving a claim whether it meets all of the threshold eligibility requirements.
- Within 10 business days of being notified of a request for inspection, EBRD Management shall provide the Panel with evidence that it has complied with the EBRD's relevant policies and procedures.
- Within 10 business days of receiving the Management's response, the Accountability Mechanism shall inform the Board, the claimant, the public and the Project Sponsor of its schedule for evaluating the claim. (Experience has shown that the length of any investigation will be determined by the nature and scope of the claim and the project).
- The Board shall make a decision regarding any recommendations raised by the Accountability Mechanism within 15 business days of receiving the report.

## **Disclosure**

The Accountability Mechanism should keep the claimant, the project sponsor, Bank management and the public informed of the status of any request and the time schedule for any review. All of the Accountability Mechanism's reports should be made available to the claimant, the public, and the project sponsor at the same time that they are provided to the Board for their decision. In addition, the Panel should publish an annual report to the President and the Executive Directors concerning its activities.

The only exception to disclosure should be that claimants must be able to remain anonymous if they so choose. This requirement protects locally affected people who may be taking an unpopular (and potentially dangerous) position by asking questions about proposed EBRD-financed projects. This type of provision is part of the World Bank Inspection Panel's rules and has worked well, protecting claimants while not undermining the integrity or completeness of any investigation.

To the extent that business confidentiality is a concern, the Panel can choose to redact passages from any reports, findings or recommendations that are deemed to be business confidential information. Redactions should be kept to a minimum given that it will only apply to private-sector projects and even then the Panel's primary focus is on the EBRD's activities and not that of the project sponsor. Also, the EBRD should inform all borrowers that information may need to be disclosed in Panel reports.