NGO Issue Paper

The EBRD's Environmental and Social Policy (ESP) of 2008 vs the newly proposed ESP – from bad to worse

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CEE bankwatch network

CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

The EBRD has a unique mission that combines the mandate to promote transition to market economy, with a political mandate to promote democratisation and an environmental and social mandate to promote environmentally sound and sustainable development. However, the bank's transition methodology does not reflect adequately this unique mission, as it focuses almost entirely on the transition to market economy and fails to reflect how the bank's investments contribute to democratisation or sustainable development.

Safeguards aren't mandatory

The EBRD's 2008 ESP requires clients "*to structure projects so that they meet all the applicable Performance Requirements*" (paragraph 28) and that "*projects will be **designed to comply** with relevant EU environmental requirements as well as with applicable national law, and will be operated in accordance with these laws and requirements*" (PR 3.5). This has meant that projects are not expected to meet the requirements upon Board approval. Instead the client prepares an Environmental and Social Action Plan (ESAP) that is expected to bring the project into compliance. The problem is that the ESAP is often not disclosed and consulted, and its implementation is not reported. Evaluation does not cover all projects and evaluation reports are not disclosed either. Bank staff claims that more than 90 per cent of projects require ESAPs and most of these projects achieve compliance eventually – a claim that contradicts experience with a number of controversial projects and one which is impossible to verify due to lack of adequate reporting of project impacts and results. Substantial impacts on communities and the environment are likely to increase even more given proposed language in the new draft Policy to allow normal project assessment requirements to be bypassed through the use of 'alternative approaches' and by deferring undefined aspects of project assessment until after Board approval.

The EBRD delegating important bank obligations to its clients

The EBRD's Environmental and Social Policy separates the commitment and responsibilities of the clients from those of the bank. The existing 2008 policy already tended in this direction but in the new draft of the revised policy, this approach is accentuated as the EBRD's envisioned role is to encourage its clients and provide them with technical support, but with few clear obligations for the bank to ensure safeguarding of nature and people by sharing the responsibility with its clients for quality assessment and implementation of projects on the basis of independently verified information.This is far weaker than other institutions, such as the Asian Development Bank, which requires substantial bank oversight. The EBRD's reliance on client self-reporting has often backfired, for example in the case of a Romanian water project that involved forced eviction, or the SOCAR Aegean Refinery project that involved a massive coal plant – neither problem was recognised or included in the client's self-assessed due diligence measures.

Weakening of biodiversity safeguards, opening the door for environmental destruction

Findings of the EBRD's Project Complaints Mechanism (PCM) have shown that the EBRD has failed to safeguard the environment in three hydropower projects, including the Boskov Most hydropower project, situated in the Mavrovo National Park in Macedonia which provides habitat for the highly endangered Balkan Lynx. The EBRD's response to the findings of the PCM was, instead of ensuring robust implementation of safeguards, to recommend further weakening of the Performance Requirements 6 on Biodiversity Conservation, for example by dropping all reference to European and international law, and by weakening the safeguards for critical habitats. Additionally the new ESP draft mainstreams the use of "offsets" throughout the policy, even in the case of critical habitats, a clear indication that the EBRD is readying itself to lead the way in funding substantial destruction of critical natural resources, claiming this can be somehow "offset" in the context of the financialisation of nature.

Category B projects

The EBRD safeguards have been particularly weak in providing for sufficient disclosure and participation of affected communities and other stakeholders in decision-making. This is often enabled by the highly problematic categorisation of controversial projects with significant potential impacts on communities and the environment, eg. from the energy and extractive industries sectors, as category B. The EBRD often chooses to focus its investments in the energy and extractive sectors on the "green" aspects of controversial projects, for example "energy efficiency" of coal mining in Serbia's Kolubara mine, "environmental remediation" of oil extraction in Patos-Marinza in Albania, "safety up-grade" of Ukrainian nuclear reactors. This is far below best practice at other institutions, such as the ADB, where categorization of a project must take into account the potential impacts of all aspects of a project regardless of funding source. The project area of influence is often misleadingly defined in order to limit the description of the project's impact and the need for assessment therefore disregards the fact that these mentioned projects involve overall increase of CO2 emissions, expansion of extraction and life-time extension of reactors. The EBRD's Energy Strategy limits bank's involvement with nuclear sector to safety modernization of existing nuclear facilities and decommissioning, however such loopholes allowing to define project's boundaries too narrowly allows the bank to support expansions and prolonged operations of ageing nuclear facilities.

Information disclosure and participation in Ukraine

In countries with weak implementation of national legislation on environmental information disclosure and public participation in decision-making, the role of international development banks can be crucial in setting up and spreading good governance practices through their investments. However, current EBRD safeguards are not instrumental to ensure even basic environmental information disclosure by the bank's clients in the private sector. The EBRD's Ukraine portfolio provides examples. A recent case with the Danosha company is a good illustration. Danosha, one of the largest industrial pig farms company in Ukraine, has refused to disclose information regarding the safety of its operations and on assessment of potential environmental and social impacts, including EIA reports, although impacts are potentially significant, especially with regards to large quantities of manure and risk of spills. The project was framed as "capital expenditures related to expansion and improvement of Danosha's existing operations" claiming no relations to the construction of new farms, thus the EBRD safeguards do not have clear provisions that would require disclosure of such information for category B projects.

Limited disclosure of information and weak requirement on participation of affected communities has led in Ukraine to public opposition even to such welcomed investment as small-scale renewable energy projects. By relying heavily on client's information and not having set a minimal requirement for affected communities participation, the EBRD has put under risk of discreditation the idea of social and environmental acceptance of renewable energy sources. The practice of fake public hearings and limited access to environmental information have caused public protests, including street action in from EBRD office in Kiev, against EBRD financed renewable projects in Ukraine - small-hydropower plants in Carpathian mountains and Ivankiv Biomass plant in North Ukraine in zone affected after Chernobyl catastrophy. Although newly proposed ESP is slightly improved on information disclosure for category A projects, it is not going to improve situation as categorization principles are not changed and it can be expected that problematic projects with potentially significant environmental and social impacts will continue to be labelled "category " projects with no clear mechanism in place to provide sufficient level of information disclosure and public participation.

The EBRD policies are also weak on the side of accountability of both the bank and their clients for successful implementation and results reached. By limiting access to project's key covenant documents, transition potential and indicators, the EBRD sharply limits public scrutiny of the projects, which is of particular importance in case of big public sector projects. Success of such projects is measured not only by implementation of project itself but, most importantly, by progress in sector's reforms that has been stipulated through project. The Ukrainian NPPs safety upgrade program involves important covenants regarding a number of important policy-level actions in decommissioning and spent nuclear fuel treatment. The EBRD, however, has blocked public scrutiny of these agreements, referring to clauses in the Banks Public Information Policy, preventing local NGOs to ensure progress scrutinizing the process and engagement with the national government. The WB role in sectoral reforms in WB countries of operation is even greater than that of the EBRD thus for WB much better transparency benchmarks shound be adopted.

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