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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.

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Information disclosure and public participation in decision-making: what changes are needed in the EBRD's policies?

Policy context

Current policy revisions at the EBRD must be set within a broader regulatory and transparency framework, outlined by initiatives like the Dodd-Frank Act in the US and the proposed EU Accounting and Transparency Directive. The introduction of stricter reporting rules for the extractive and financial services industries has set a new benchmark for transparency, rejecting industry claims about issues like confidentiality, competitive disadvantage and demands for exemptions. New financial regulation has a potentially global impact, as they concern international companies registered in US and EU jurisdictions and should be taken on board by international financial institutions like the EBRD to create a 'level-playing field'.

Transparency is just one of the 'environmental access rights'¹, a precondition to exercising the right to informed participation in decision-making. In other words transparency is a means to an end, rather than a stand-alone right. Increased transparency does not automatically produce 'meaningful' public participation and inclusion of its most marginalised members, if it fails to address the information and power asymmetries that it is intended to remedy.

Current policy practice with respect to transparency has its shortcomings. The preoccupation with establishing disclosure procedures can become a distraction, diverting valuable resources from the ultimate policy objectives. Another danger is that the agreed disclosure and participation processes are 'subverted by those with the power to deny their original intent'.² For example, disclosing huge amounts of aggregated data or highly technical information without regard for a stakeholder's ability to utilise it is an example of transparency that fails to empower the information users in the decision-making process. It introduces the need for intermediaries, such as NGO experts, but more importantly, it degrades the trust in the process.

¹ The *environmental access rights* were articulated in Principle 10 of the Rio Declaration of 1992.

² Gupta, A. 2008, 'Transparency Under Scrutiny: Information Disclosure in Global Environmental Governance', *Global Environmental Politics* 8:2, Massachusetts Institute of Technology

The purpose of increased transparency also differs depending on the stakeholder it serves. On the one hand, businesses often prefer to depoliticise transparency and public participation in decision-making processes³ by employing technical tools for self-regulation, like auditing and environmental management systems. On the other hand, transparency is seen by many as instrumental in promoting accountability, equity and justice in environmental decision-making by creating a policy environment in which '*citizens can protect their interests against those of more powerful actors*'.⁴

In this regard, the EBRD policy must take a stance: will it limit the ways in which stakeholders interact with each other and with the environment by adopting technical and procedural solutions? Or will it aim to promote shifts in social relations, in line with its mandate to promote sustainability and democratisation in its countries of operation?

Bankwatch welcomes the simultaneous and two-stage revision process of the 2008 Environmental and Social Policy (ESP) and the 2011 Public Information Policy (PIP) of the EBRD. Bankwatch also commends the improved practice in disclosure of documents on category A projects, including Environmental and Social Action Plans (ESAPs) and Stakeholder Engagement Plans (SEPs). Based on experience with EBRD-financed projects, Bankwatch recommends the following improvements in the bank's policies to better reflect the needs of the public:

I) Improving transparency and participation on category B projects and/or changing the categorisation criteria.

Currently the ESP requires disclosure of only summaries of ESAPs for category B projects and contains no explicit requirements for consultation of their drafts, even though the environmental or social implications of such projects may be significant.

Since 2011 more projects in high-risk industries are increasingly being categorised as B projects. Such projects include the nuclear safety up-grade in Ukraine⁵, SVL Group project in Russia⁶, the Hambledon mining project in Kazakhstan⁷, and the Dundee Precious Metals revolving debt facility in Bulgaria and Armenia⁸.

Disclosure of only a non-technical summary of projects and summaries of ESAPs has proven to be insufficient to ensure affected parties are provided with clear information about the potential risks and opportunities from the EBRD's investments. Although the project boundaries of such projects may be limited in a way to avoid the observation of stricter policy requirements, their due diligence and ESAPs usually concern wider environmental and social impacts related to the company's operations.

To ensure effective dialogue and better public acceptance of a project, information disclosure and the public consultation meeting, both for affected and interested parties, should be organised before the final decision on the project is taken. For example, including an upgrade of an on-site rail

3 Gaventa, J. and McGee, R. 2010, 'Synthesis Report. Review of Impact and Effectiveness of Transparency and Accountability Initiatives', Transparency & Accountability Initiative, Open Society Foundation

4 Ramkumar, V and Petkova, E. 2007, 'Transparency and environmental governance', in Forini, A. (ed), 'The right to know. Transparency for an Open World', Columbia University Press

5 ... concerned not only with safety, but also with life-time expansion of old and even already decommissioned reactors.

6 ... for acquiring vessels for oil transportation, with potential impact on sensitive ecosystems in the Kerch Strait, the Taman-Zaporozhski reserve and the Taman and Donskoi bays wetlands

7 ... after a controversial cyanide spill.

8 ... including Deno Gold Mining's operations in Armenia that have met significant opposition from affected communities due to negative impacts of the Geganush tailings facility and acquisition of the Shehumyani village land for new open pit mine.

loading facility in the Chelopech mining project⁹ was a positive result of such consultation, although input from CSOs was not explicitly requested as per policy requirements on category B projects.

(1) Project categorisation should reflect both the environmental, social and economic risks posed by a project and as well the level of interest of public stakeholders.

(2) ESAP drafts for both category A and B projects should be consulted with interested public stakeholders, and related studies, assessments and analysis (or relevant parts of them) should be disclosed in advance to facilitate meaningful informed participation;

(3) As a minimum, **ESAPs of category B projects should be pro-actively disclosed** by both the client and the bank.

II) Including disclosure conditions and environmental and social covenants in loan agreements.

The bank's aim to train its clients to better disclose information and engage with stakeholders is worthwhile, and the progress with disclosure on category A projects is notable. Still client disclosure does not functioned properly, requiring huge amounts of time to obtain basic environmental information that should be a right as per the Aarhus Convention (for example in the case of ArcelorMittal).

Given that client disclosure is different than that of the EBRD, the bank has also a duty to actively release environmental information and documents including project-related ones, as they constitute a basis for the EBRD decision-making process.

Moreover, project information disclosure sometimes fails to deliver on the ultimate policy goal i.e.

informed stakeholder participation. This failure is particularly notable in category A projects, like the Kolubara project in Serbia or the Oyu Tolgoi project in Mongolia. Although project information is available, the demands of affected communities are not taken into account during decision-making. In the former case the implementation of the ESAP is delayed, without considerable leverage of the EBRD in resolving the problems of the community. In the latter case, consultations about the construction phase and its impacts are taking place when construction is almost finished.

Therefore:

(4) The EBRD should include **a clause in loan agreements obliging clients to disclose basic environmental and social information** concerning the project, at least on demand, for Category A, B and FI projects.

(5) Additionally **loan agreements should condition the disbursement of money from the EBRD on the timely and effective implementation of SEPs and ESAPs**. If the ESAP is meant to bring a client's operations into compliance with EBRD policies, the bank should not tolerate insufficient progress towards compliance.

(6) the ESP should include provisions for the **disclosure of all environmental and social covenants within the loan agreements** between the EBRD and the project sponsor in a timely and proactive manner, as an explicit part of PSDs.

III) Routine updates of project-level information and affirmative disclosure of monitoring results throughout a project's lifetime

Several times civil society organizations have asked the EBRD about the actual environmental impacts or results of certain projects and found that the EBRD feels unable to disclose the information itself without

9 ... as part of the DPM term loan approved in 2010.

asking its client. In addition in some unfortunate cases where information is obtained from the client, it cannot be guaranteed that it is correct, as it lacks independence.

Thus, the continuous and proactive disclosure of project-level information and documents, obtained by the EBRD itself or by its consultants during independent monitoring visits, is a key element to effective public participation in the decision-making process at the different stages of a project.

(7) The EBRD should update PSDs on a regular basis throughout the project cycle, particularly during project implementation, which at present rarely happens after a project's initial approval of the EBRD Board.

IV) Disclosing transition impact ratings

In line with its transition mandate, EBRD projects must be oriented towards assisting a country's transition and are therefore assessed for their potential and risk to achieve this end. Currently PSDs contain partial information on transition impacts, and the detailed justification for claiming positive transition impacts has been questioned like in the case of two hydro-power projects, Ombla in Croatia and Boskov Most in Macedonia. We believe that qualitative transition impact ratings and information on possible risks to achieving transition impact should be publicly disclosed in order to allow for public appraisal of how well a project delivered on such objectives and contributed to fulfilling this mandate.

(8) Transition ratings of projects should be released as a part of PSDs. Detailed justification for transition ratings should be available upon request.

V) Board transparency

We welcome the EBRD's commitment to release minutes of Board meetings and believe it is an important step towards good governance. While

minutes provide a legal record of the decisions taken, they do not reflect the discussion in its entirety. The public has the right to see how they are represented at the Board to hold its representatives accountable for its decisions.

(9) To this end, the EBRD should also include as part of its Board minutes, a record of voting with a list of abstentions and negative votes; the opinions expressed; and where relevant, written statements prepared by Executive Directors.

VI) Board reports

Board reports currently contain the best publicly-available overview of EBRD efforts to address environmental and social issues and as such the EBRD should release these for the private sector and/or to significantly improve PSDs in order to fulfil goals of the Aarhus Convention. The current policy contains only provisions for the release of Board reports for public sector projects, and this should be expanded to include private sector projects as well. We see the absence of such a provision for private sector projects as unjustified and arbitrary. If the reports contain confidential information, this can be redacted from the report subject to a principled harm-test of the disclosure that such information would cause.

(10) The EBRD should disclose public sector board reports on a routine basis and also make publicly available board reports for private sector projects.