

CEE Bankwatch Network's Comments on the EBRD Environmental Policy Discussion Paper

June 2007

The European Bank for Reconstruction and Development is reviewing its Environmental Policy, last updated in 2003. As part of the consultation process, the EBRD has produced an indicative "Environmental Policy Discussion Paper" as well as a draft "Stakeholder Consultation and Disclosure Plan", and submitted both for public comments in English and Russian for a period of 45 days. The EBRD Environmental Department also conducted a session with CEE Bankwatch Network on the review process and the policy concept in October 2006 in Prague and held a meeting on the Environmental Policy for NGOs present at the Bank's annual meeting in Kazan, Russia in May this year. Building on these discussions, CEE Bankwatch Network would like to offer its written recommendations on the areas below.

Structure

Bankwatch welcomes various alternatives put forward by the discussion paper regarding the structure of the new policy. We are convinced that the current Environmental Policy should be expanded to an Environmental and Social Policy that includes new safeguards on social dimensions and reconsidered requirements and standards on environmental protection, disclosure and public consultations.

While we agree that the Environmental and Social Policy should maintain four strategic directions of the existing policy, we also believe that policy needs to set up specific directions for the EBRD to follow in the years to come. We therefore propose that the EBRD drafts strategies in the following areas:

- Gender
- Labour
- Poverty

In our view this could be done either through the incorporation of strategic sections dedicated to each of the areas into the new Environmental & Social Policy or through the development of topic-specific policies. The EBRD should adopt comprehensive strategies in order to underline its commitment to social and poverty issues in the region, allocating to them the same importance as the environment.

Gender strategic directions

Objectives

Bankwatch recommends that the EBRD consolidates and formalises the integration of gender issues both outside and within the institution, and thinks strategically about the future steps to be undertaken with regard to gender mainstreaming.

It has been recognised worldwide that supporting a stronger role for women in society helps economic development, family well-being and sustainable development. The EBRD should undertake specific

steps to empower women over the course of transition and help eradicate the barriers that prevent women from benefiting from development. The EBRD should particularly focus on the areas of health, labour conditions, asset ownership, natural resources and access to financial services, and overall strive to implement commitments made at the Beijing World Conference on Women.

Gender considerations should be mainstreamed into all EBRD policies, strategies and activities and occur in the preparation, implementation, monitoring and evaluation phases.

Policies

- EBRD should ensure that integrates gender equality in its operational and sector policies regardless of how gender-neutral they may seem.
- The EBRD should design projects and initiatives that target women and address gender disparities and poverty in the spirit of the Beijing declaration: *“Promote women's economic independence, including employment, and eradicate the persistent and increasing burden of poverty on women by addressing the structural causes of poverty through changes in economic structures, ensuring equal access for all women, including those in rural areas, as vital development agents, to productive resources, opportunities and public services.”* In that respect the EBRD should set up a clear target for support to projects that are aimed at improving the status of women, especially in the areas of health, education, agriculture, employment and SMEs. We recommend that the EBRD provides at least five such loans annually.

Country Strategies

- Gender considerations should become an integral part of the country strategies in both the preparation and implementation of monitoring stages.
- The country strategy should look into disparities in women's and men's access to opportunities within a country's socio-economic and political contexts, a country's progress in improving gender equality and setting up a common framework for donors and the respective government in tackling gender inequality in the future.
- We understand the lack of capacities at the EBRD which prevents the bank from elaborating country gender papers that feed into country programming such as the World Bank's and Asian Development Bank's Country Gender Assessment and the African Development Bank's Multi-Sector Country Gender Profile. We suggest the EBRD considers conducting gender assessments focused on the regions of where the bank is involved – southeastern Europe, central Asia, Caucasus, Russia and the NIS countries – at the minimum.

Technical cooperation

- The EBRD should promote gender mainstreaming through technical cooperation activities targeted at the preparation and implementation of EBRD projects.

Stakeholders working group on gender

- The Beijing Platform for Action recognises the important role of NGOs and civil society, the private sector and other actors in achieving the equality objective. The EBRD should establish

a working group on gender consisting of EBRD senior management and staff, gender experts and interested stakeholders from various fields (NGOs, academia, civil society) and different EBRD borrowing and donor countries. The working group should convene periodically, at a minimum on an annual basis, to maintain a strategic dialogue on gender mainstreaming in EBRD activities similar to the ADB External Forum on Gender and the World Bank External Gender Consultative Group.

Outreach and publications

- The EBRD should promote and seek input into its gender mainstreaming through organising round tables, conferences and seminars on gender topics.
- The EBRD should consider conducting gender-specific reports and analysis on a more regular basis.
- It is advisable that the EBRD maintains a contact database and a directory to independent gender specialists, gender academics and gender-oriented NGOs to forge continuous dialogue and the involvement of stakeholders in the development of the EBRD's gender mainstreaming strategy.

EBRD gender specialist capacity

- The absence of a technical gender specialist at the EBRD is a serious constraint. In contrast to one social specialist employed currently by the EBRD, the ADB currently has 9 regional gender specialists.

Labour and poverty strategic directions

Both the labour and poverty strategic sections and policies should be similar in structure to the gender one and touch upon the following areas:

- Objectives
- Incorporation of objectives into operational and sectoral policies as well as the country strategies
- Disclosure and public participation
- Capacity

Due to time constraints we were not able to consult our partners on the two strategic directions and therefore provide the EBRD with the same level of detail as above. However, if this concept is incorporated into the policy, we will be happy to expand on them and provide EBRD staff with specific recommendations.

Project boundaries

Bankwatch would expect a broad definition of project boundaries, according to a project's area of influence.

The delineation of project boundaries should be a part of stakeholder consultations. Reaching consensus over boundaries reduces potential disputes over boundaries in the later stages of the project.

Due diligence

- All associated facilities, regardless of whether they are funded as part of a project, for example motorway sections treated as separate projects, hazardous waste facilities necessary to deal with waste extracted from rehabilitated landfills, or drainage canals leading to wastewater treatment facilities
- Full cumulative impacts from further planned development of a project as well as other projects in the area, for example treatment facilities for sludge from wastewater treatment plants, or planned further expansions of airports
- Induced activities – in particular the induced climate impacts of projects such as the combustion of oil carried through oil pipelines and additional flights as a result of airport expansions. In such cases it is not the facility itself which is producing the majority of emissions but an activity which is entirely dependent on the facility and without which the facility itself would be meaningless.

Determining project boundaries is inherently related to the assessment of the direct and indirect project effects that occur on the project site and outside of it. Bankwatch recommends that the EBRD assesses direct on-site, direct off-site, indirect on-site, and indirect off-site effects of its projects.

- In our opinion, including these factors within project boundaries is crucial and should be clearly defined in the revised EBRD Environmental and Social Policy.

EBRD environmental and social standards applicability

Bankwatch believes that the current case-by-case system of defining whether a whole company or project site must meet EBRD environmental and social standards is non-transparent, sets up double standarding and leads to poor corporate practice. As such, it needs to be more strictly defined. In our opinion it is crucial for the entire company to meet EBRD environmental and social standards, in order to avoid condoning the application of double standards across a company's operations.

The timeline for meeting the standards is more difficult to define. On the one hand, standards for public participation and access to information must be a prerequisite for receiving EBRD financing, and in most cases all EU legislation and EBRD standards should be complied with at the commencement of a project.

However, it is also true that some projects take place precisely in order to raise standards to those of the EU or EBRD. In these cases, where a company completes an entire project and still does not meet EBRD environmental and social standards, or cannot publicly prove that it meets the standards, the company must be avoided in the future, and EBRD must publicly recognise this.

Bankwatch believes that the applicability of the environmental and social standards should extend beyond the associated facilities that are not funded as part of the project. This way the EBRD's

sustainability standards get extended from the direct project operation to a larger base of companies and have an attendant multiplier effect. We recognise the practical constraints on the ability of companies to influence the conduct of their business partners so we suggest that the EBRD standards apply to established or direct business relationships including all the contracted companies.

Project classification

Bankwatch would welcome an expanded classification of EBRD financed projects in order to distinguish the environmental and social risks associated with project and the needs for public participatory process. With the adoption of complex social standards, the current environmental categorisation of projects would be unfit for purpose as it cannot combine two levels of environmental and social risks and the related benchmarks for the EBRD and clients.

A separate classification on public consultations should become an integral part of the proposed triple classificatory system in order to step beyond the one-size-fits all approach entailed in the current environmental categories that in some cases fail to reflect on real consultation needs.

We would also recommend that the EBRD adds a separate category for multi-project facilities.

Project requirements

Management systems

We commend the EBRD's proposal to introduce a requirement for the Environment and Social Management System (ESMS) in the new policy framework as we believe that ESMS is an appropriate instrument for the correct management of the anticipated social and environmental impacts and the positive implementation of EBRD standards. We would like to underscore the IFC's approach that ESMS is a "dynamic, continuous process initiated by management and involving communication between the client, its workers, and the local communities directly affected by the project"¹, to remind that relevant disclosure and participatory requirements should be adopted together with the ESMS regulations in order to allow public involvement in the preparation and potential adjustments to the management system.

Environment

Environmental liability

Liability for damage to nature is a prerequisite for making investors feel responsible for the possible adverse effects of their operations on the environment which many tend to consider mistakenly as a public good for which damage an individual actor should not be held responsible. The mechanism of environmental liability should result in an increased level of prevention and precaution on the side of the investor and minimisation of environmental risks. The White Paper on Environmental Liability demonstrates that "available evidence on existing environmental liability regimes suggests that

¹Performance Standards on Social and Environmental Sustainability, 2006, Performance Standard 1: Social and Environmental Assessment and Management Systems

industry competitiveness has not been disproportionately affected. Nor have the environmental liability regimes existing in some Member States been associated with significant competitiveness problems.”²

- We therefore believe that the EBRD should fully reflect the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage in its new policy.

Climate change

Climate change is one of the greatest environmental, social and economic threats for society. The scale of climate change depends on the amount of greenhouse gas pollution – so that ambitious steps to reduce carbon pollution are urgently needed. Investments should be focused on clean, highly effective technologies, support innovations and promote energy modernisation. Therefore it is very important that this topic receives due consideration in the forthcoming environmental policy of the EBRD.

The induced emissions quantification should also be part of the assessment procedures. It is mainly emissions from sources generally outside the boundary of an organisation. These emissions are associated with waste disposed off-site, as well as the generation of imported electricity, caused by a company’s supply chain, external distribution or employee business travel. No less important are indirect emissions connected with other sectors. Some projects with relatively low GHG balance can induce a significant increase of emissions in another sector of the economy.

Annual reporting for each project on GHG emissions is highly important not only for keeping an overview but also to assess future actions on reductions. The reporting should be carried out in a systematic and common manner and the reported information should be relevant, complete, consistent, transparent and accurate. Annual GHG reporting helps projects to identify GHG emissions reduction opportunities and build a middle and long term strategy to manage and reduce GHG emissions. The reporting should include a calculation of GHG emissions per unit of the product of the facility to show the efficiency improvements.

The assessment of the GHG emissions and the annual reporting requires certain know-how and constitutes the need for special administration. The EBRD should provide effective help with these processes especially for small scale projects.

The question of commercial boundaries should be considered from a long term perspective. Diverse systems of emissions trading schemes and GHG fees and taxes are going to constitute a certain price for GHG emissions. Together with the rise of energy prices this development will improve the profitability of climate friendly projects. The client should also assess a range of possibilities in order to improve the financial balance of the project. A wide scale of incentives as state support for renewable energy production and for energy efficiency and savings improvements should be considered in the due diligence process. A regular cost-benefit analysis should be made on additional measures for the reduction of GHG emissions with regard to development on the energy and emissions markets and new technological progress. Such analysis should be part of the GHG reporting.

² White Paper on Environmental Liability, 2000, http://ec.europa.eu/environment/liability/pdf/el_full.pdf

Biodiversity

The EBRD should adopt standards on biodiversity that would fully reflect EU directives as well as IFC Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management. From the EU and international legislation, the following directives and conventions should be adhered to:

- Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds
- Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora
- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy
- European Landscape Convention (the Florence Convention)
- The Bern Convention on the Conservation of European Wildlife and Natural Habitats
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- The Bonn Convention on the Conservation of Migratory Species of Wild Animals
- The Rio de Janeiro Convention on biological diversity
- The Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat

No-go zones

The EBRD is advised to adopt a 'no-go zones' principle according to which the bank will not support extractive industries investments and other industrial scale operations in the areas of high environmental or historical and cultural value. The 'no-go zones' should include:

- Natura 2000 network
- IUCN Category I-IV protected areas
- UNESCO World Heritage Sites
- Ancient forests as defined by the FSC
- Indigenous sites if a 'broad community support' is not achieved
- Areas identified in the Extractive Industries Review

Labour

We welcome that EBRD's long-awaited decision to reference the relevant ILO conventions and particularly to adopt the fourth core labour standard on Freedom of Association and Collective Bargaining. We also welcome that the EBRD has included draft requirements towards clients in the discussion paper clauses such as the working conditions and terms of employment, human resources policy and a grievance mechanism.

Additionally, we would encourage the EBRD to spell out specific requirements for clients on workers' organisations, specifically on freedom of organisation in countries where national law restricts workers' organisations or is silent on the matter. Here we suggest the EBRD uses the IFC's approach by requiring that the client will not discourage workers from forming or joining workers' organisations

and that it will enable alternative means of grievance mechanisms and protecting workers' rights.³ Special attention should be also paid to non-discrimination and equal opportunities in terms of recruitment and working conditions.

Finally, the EBRD should protect women's labour rights and prevent sexual harassment in projects it funds.⁴

Vulnerable groups

We welcome the EBRD decision to include the safeguards on vulnerable people in the new Policy. Below follow our key recommendations in this area:

- Vulnerability Analysis identifying groups that may be disproportionately affected by the project due to their discrimination and marginalisation, examining the sources of vulnerability and proposing prevention and mitigation strategies, should become a part of the Social Impact Assessment.
- Consultations over projects should be conducted with particular attention paid to the needs and representation of the vulnerable groups regardless of the number of vulnerable people affected.
- The EBRD might consider introducing special features in the projects to remedy the exclusion and discrimination.
- The EBRD should consider expanding the assessment of vulnerable groups from the level of projects to the national level, focusing on severe sources of vulnerability in the Country Strategies.
- Given the EBRD's qualification and capacity constraints, it is recommended that the bank employs external experts to assist with dealing with vulnerable groups on a project and strategic policy level. The EBRD should also use the consultancy of NGOs and other institutions working with vulnerable groups in the countries of operation.

Gender

We would like to express our disappointment over the scope of suggestions related to gender put forward in the discussion paper after hearing that gender was high on the EBRD's agenda at the recent AGM in Kazan. Earlier in our comments, we have proposed strategic reaching recommendations on gender; here we would like to outline our recommendations for gender in the EBRD's investments in projects.

Project lending

- The EBRD should promote gender mainstreaming in projects at all stages of the project cycle from identification through evaluation.
- We encourage the bank to network with local and international gender organisations throughout the lifetime of the project as these can provide valuable inputs into the discussion.

³International Finance Corporation's Performance Standards on Social & Environmental Sustainability, Performance Standard 2, Labor and Working Conditions, Paragraphs 9, 10

⁴See Bankwatch observations over the sexual harassment and marginalisation of female employees in Boom Time Blues: Big oil's gender impacts in Azerbaijan, Georgia, and Sakhalin, 2006, <http://bankwatch.org/documents/boomtimeblues.pdf>

- Special programmes and strategies should be built into projects to encourage the involvement of both sexes, particularly that of women who may be disadvantaged to engage in the project assessment, planning, monitoring and evaluation.
- The EBRD should ensure that females have access to project benefits, particularly in large-scale projects, the restructuring and privatisation of state-owned enterprises and extractive industries that can impose extra risks on women. The EBRD should ensure that women are not disproportionately disadvantaged by promoting programmes aimed at upgrading the living conditions of women.
- Incorporating gender into the social assessment at the early stages of the project cycle can improve the project. Gender analysis should become an integral part of the social impact assessment to determine systematically differential impacts of projects on men and women when it comes to such issues as land use, compensation for properties, health and safety and address any negative outcomes of the project during the development stage.
- The EBRD might consider using the ADB's approach for including gender at the project level by requiring that each project has an Initial Poverty and Social Impact Assessment (IPSA) that is often included in the appendices of project documents. If the IPSA identifies particular gender issues, the bank would be required to call in a social development or gender specialist to assist in the project.
- Gender concerns should be incorporated into the project environmental management alongside the environmental concerns, and not included solely.
- The projects should incorporate the following gender equality safeguards:
 - women's employment and business opportunities
 - women's representation in public consultations and monitoring
 - resettlement compensation for female-headed households for resettlement.
- Women have less access than men to resources including education, health care, land, work, and finance. This reduces women's ability to participate in the economy and to contribute to raising living standards.

Disclosure and public consultation

The discussion paper is right to identify that more clarification is needed between disclosure and public consultation responsibilities for the EBRD versus those of the project sponsor. Such clarification will promote clear accountability of those involved in project financing and acknowledge previous recommendations from civil society and NGOs⁵.

Bankwatch supports the proposal of the EBRD to revise the Public Information Policy (PIP) such that "The PIP [contains] all EBRD-related disclosure requirements, whilst the new Environmental and Social Policy [sets] out the consultation and disclosure obligations of the client." To this extent, it is worth revisiting NGO recommendations from the 2006 PIP review⁶, as well as the earlier 2003 review of the Environmental Policy.

⁵For example, see the Global Transparency Initiative's "Comments on the EBRD 2006 Public Information Policy Review" at http://bankwatch.org/documents/GTI_Comments_EBRDPIP_04_06_1.pdf

⁶It is also worth noting that many of these recommendations were deferred precisely to this review of the Environmental Policy. See "EBRD Public Information Policy: Report on the Invitation of the Public to Comment" at <http://www.ebrd.org/about/policies/pip/comment.pdf>, particularly responses under 'project-related information' and 'environmental aspects.'

EBRD disclosure

As a majority of project-specific environmental information produced during the project cycle remains confidential, the PIP needs to be expanded to include a robust set of disclosure requirements for the EBRD. In order to more fully balance its dual mandate, the EBRD should continually provide project information to stakeholders both before and after Project Summary Documents (PSD) are released, and prior to the project completion evaluations of the Evaluation Department. The PIP should include disclosure requirements for environmental information produced throughout the project cycle, including the initial phases of project preparation and appraisal, and the latter stages of implementation and completion.

One way to achieve substantive increases in transparency of operations during the project cycle is for the EBRD to adopt a genuine presumption in favour of disclosure. Such a presumption was advocated during the recent revision of the PIP, and while the bank has made some important steps in this direction, it still has some areas in which to progress further towards openness.

The basic tenet of a true presumption of disclosure is that all documents possessed by the bank should be publicly available and proactively disclosed. In the case of business confidentiality for some sensitive information held by the EBRD, the disclosure of this information should be subjected to tests against a public interest override.⁷

Recognising that the enhancement of transparency within an institution is a gradual process, below we outline areas where we feel pro-disclosure reforms are most pressing.

To demonstrate the level of openness of the EBRD and to enable easier communication with the public, we recommend that the Bank keeps an overview of the environmental information and documentation that is disclosed routinely or upon request by the institution and its clients.

Recommendations

- The EBRD should disclose public and private sector PSDs immediately after Initial Review and not less than 60 days prior to Board review.
- The EBRD should update PSDs on a regular basis throughout the project cycle, particularly during project implementation, which in practice rarely happens. The EBRD should update PSDs at a minimum annually.
- The current practice of including the annual environmental reports summaries in the text of the PSD is confusing as the information is not structured and is hidden in the text (e.g. Mittal Steel Termitau PSD). The brevity of the environmental updates has little informative value to affected citizens and interested stakeholders. We are convinced that environmental annual reports should be released in the public domain in their entirety and not in a form of summaries. We also suggest that they are not included in the text of a PSD but that they are disclosed as stand-alone documents.

⁷More information on the presumption of disclosure is available from the GTI's "Transparency Charter for International Financial Institutions: Claiming our Right to Know", online at: [http://ifitransparency.org/activities.shtml?x=44474&als\[select\]=44474](http://ifitransparency.org/activities.shtml?x=44474&als[select]=44474)

- Information on social impacts and consultations should also be included on a mandatory basis in separate sections of the PSD.
- The disclosure of Environmental Action Plans (EAPs) is an important measure which will help the public understand the ways in which management, mitigation and monitoring will occur during project implementation and operation. This disclosure of EAPs is also an important instrument to ensure client accountability. The EBRD has so far disclosed EAPs only for several high-risk projects. While public requests for disclosure have been dealt with on a case-by-case basis, a systematic approach should be adopted, to put in place clear regulations for disclosure of EAPs in cases of high- and medium-risk environmental and social projects. Where confidentiality concerns are raised by the project sponsor, sensitive parts can be blacked out unless there is an overriding public interest in the information.
- The PIP should require that supplemental environmental and social assessment documents, including but not limited to oil spill response plans, emergency response plans and consultants' evaluations of particular aspects of social and environmental impact are part of the overall assessment process and should be subject to the same requirement for timely disclosure.
- Environmental Impact Assessments (EIAs) for Category A private sector projects should be disclosed 120 days prior the project's Board date.
- As part of the due diligence and consultation process, full EIAs for Category A projects should be regularly disclosed in English and national languages on the EBRD website. Currently the EBRD releases only EIA summaries and leaves disclosure of full EIAs to project sponsors. However experience indicates that project sponsors often fail to abide by these disclosure and public consultation requirements (e.g. Zagreb incinerator, Belgrade Bypass projects).
- Environmental Analyses for Category B projects should be routinely disclosed by the bank. The current Policy only requires the project sponsor to disclose summaries of "the mitigation measures, action plans and other initiatives agreed" in an "appropriate language". Moreover, our experience shows that the project sponsor fails to disclose even the environmental summary. Given the significant impacts that Category B projects may have on communities (e.g. the Kaufland project), it is recommended that the project sponsor discloses Environmental Analysis as a stand alone document or as part of a feasibility study.
- EIAs for all projects should be comprehensive with particular attention to cumulative project impacts. The practice of splitting projects into phases (e.g. Vlora industrial zone) should be prohibited.
- The PIP should require that project monitoring documents, including lenders' environmental audits (Category 1), are part of the formal assessment process and should be subject to the same requirement for timely disclosure as are the environmental and social impact assessments summaries for Category A projects.
- The PIP should require the disclosure of project implementation reports, including Annual Environmental Reports, Periodic Environmental Audits and Exit Audits.
- Operation performance evaluation reviews prepared by the Evaluation Department should be disclosed in their entirety. Where business confidentiality is claimed by the client, the EBRD can black out those parts of the report subject to identity protection.
- The EBRD is encouraged to release topic-specific studies and analyses elaborated or commissioned from independent experts and consultants and held by the Bank, such as the

recent gender analysis. The EBRD should follow the example of the EIB whose current practice allows that.⁸

Client responsibilities

Under the current Environmental Policy, the EBRD requires the project sponsor to conduct consultations as part of the bank's project appraisal process. However, there is little mention of the form or extent to which these consultations should take place. The discussion paper makes important notes about some areas of client responsibility which could benefit the existing Policy through further exploration and development during the current review, in particular achieving "broad community support" during the consultation process and expanding the scope of disclosure of environmental information and action plans for category 'B' and 'C' projects.

There is a need for the revised Environmental Policy to include identifiable benchmarks from the project sponsor against which to measure the quality of public consultations. One way to do so is by ensuring free, prior and informed *consent* (FPIC) from affected communities and local populations for proposed projects. FPIC differs from basic consultation requirements because its goal is a determination of support, or not, for a particular investment. It is a two-way, interactive negotiation that offers communities greater influence in decision-making, and is more likely to result in direct benefits for them.

This issue of FPIC also relates to the requirements of project sponsors for consultations on Category 'B' and 'C' projects. As the current Policy requirements for the project sponsor are minimal, the EBRD should adopt a more robust approach to the identification of stakeholders and disclosure of information for Category B and C projects.

Recommendations

- An absolute minimum requirement should be that all environmental information submitted by clients to the EBRD should be publicly disclosed by clients, in a timely manner.
- While the discussion paper suggests that "there may be expectations... to describe the process of meaningful engagement as 'free, prior and informed consultation,'" the EBRD should move beyond similar provisions at other IFIs and require its clients to reach FPIC in its consultations with affected peoples.
- The discussion paper observes the "need for better stakeholder identification so that clients can prepare communication strategies tailored to the project and its stakeholders". We believe that this systemic failure results from the lack of basic requirements for project sponsors to follow during public hearings and consultations.⁹ Such requirements should address clear procedures for location, facilitation, notification and advertising of the event, reporting and disclosure.

⁸ Access to Environmental Information, EIB, 2007,
http://www.eib.org/cms/htm/en/eib.org/attachments/access_to_information.pdf

⁹ A detailed set of these recommendations are found in the Bankwatch submission during the 2003 revision of the Environmental Policy; see "Comments on the Draft EBRD Environmental Policy" p. 4
http://bankwatch.org/documents/cmnt_envpol_bwn_01_03.pdf

- In order to achieve effective and inclusive consultation processes, we suggest that the EBRD requires clients to organise public hearings and release a Public Consultation and Disclosure Plan (PCDP).
- The current Policy states that “the public should be able to provide comments and recommendations on the PCDP as well as the other scoping documents” as part of the initial phases of public consultations. In practice, however, investors rarely disclose PCDPs for public comment (e.g. the Vlora thermal power plant).
- Experience has also shown (e.g. Kaniv Rivne transmission line) that investors fail to conduct public consultations in line with existing EBRD standards, despite the involvement of international consultant companies which are expected to have expertise in the field and familiarity with EBRD requirements. We strongly suggest that the EBRD adopts more stringent requirements regarding the employment of consultancies during public consultations.
- The new Policy should require that environmental, social, technical and economic surveys and documents serving as the background materials for the project assessment are disclosed to interested stakeholders. The lack of disclosure of these documents prevents stakeholders from having full and unmediated understanding of the proposed project and its impacts on the environment and the population (e.g. Western High Speed Diameter project).

Monitoring and Reporting

Environmental Advisory and Monitoring Groups

We applaud the EBRD for coming up with an initiative to improve the effectiveness of project monitoring and reporting standards and procedures. With regard to this we propose that the EBRD sets up Environmental Advisory and Monitoring Groups (EMAGs) for environmental and social Category A projects that are to impact negatively on the environment and the local population.

Bearing in mind the EBRD’s dedication to ensure public participation and transparency, EMAGs would ensure proper monitoring and implementation of mitigation measures and deal with issues arising over the course of the construction phase. The successful example of the EMAG working on the Skopje Bypass project in Macedonia shows that this approach is very transparent, participatory and useful for all parties included, and ultimately, beneficial to the realisation of the project.

Disclosure of monitoring reports

We advise that the EBRD follows the good example of the EIB¹⁰ and releases at the minimum upon request the environmental information gathered by the Bank during the project monitoring. This includes:

- Monitoring Mission Reports
- Project Progress Reports
- Project Completion Reports

¹⁰ Access to Environmental Information, EIB, 2007, http://www.eib.org/cms/htm/en/eib.org/attachments/access_to_information.pdf

- Environmental studies, provided by a project promoter or other third party

Financial Intermediaries (FIs)

Adherence to EBRD safeguard policies

Under the current environmental regulations, the EBRD's FI subprojects are required to meet only the national legislation rather than the bank's more stringent environmental and social standards for direct lending. On a case-by-case basis, the EBRD may set additional requirements for the subprojects. This non-transparent and unsystematic arrangement sets multiple standards for clients whose environmental and social compliance relies on the one hand on the FI's capacity to monitor the subprojects and on the other hand on the capability of the host country to enforce its regulatory framework.

Such an approach may work well in the new EU and pending member countries of operation that have more robust environmental legal frameworks and enforcement regulations. The same approach may entail environmental and social risks in the early transition countries where legal frameworks may be weak and law enforcement tends to be poor. If FI projects are to achieve environmental and social protection along the EBRD's own and international norms, the bank needs to adopt a systematic approach to FI safeguards and require that the subprojects comply with the bank's environmental and social standards. This is of particular importance for FI projects in early transition, Russia and NIS countries.

Classification of FI subprojects

The EBRD uses a specific "FI" classification to indicate that the project involves lending through FIs such as banks or equity funds. The EBRD requires an FI to undertake a due diligence process assessing potential environmental and social impacts associated with the subprojects. Although it can be expected that the FI rates the environmental and social risks, the EBRD does not disclose the results of the classification as it normally does with direct-lending projects. As a result, the public does not get to learn about EBRD-financed subprojects' impacts in a formal way.

- Bankwach recommends that the EBRD starts disclosing the rating of the environmental and social risks associated with the FI subprojects.

Information disclosure

The EBRD informs the public of those FI projects going under board approval through project summary documents (PSDs). The PSDs, however, rarely contain details on subprojects that the FI will likely be financing and on their associated environmental and social impacts. The EBRD hardly updates these PSDs during the lifetime of the FI projects; as a result the public is deprived of the opportunity to engage in the projects.

- Bankwach recommends that the EBRD adopts a formal disclosure process relevant for its FI investments and starts disclosing the list of subprojects financed through FIs in the PSDs and expands on the environmental and social impacts of these in regular PSD updates.

The case for more resources within the Environment Department

As the discussion paper acknowledges, there is now increased focus on the impacts of FIs, as much as anything because of the growth in this part of the EBRD's activities.

As a November 2006 report from the EBRD's Evaluation Department (*Achieving the Bank's Environmental Mandate through Financial Intermediaries*) states: "Since 1994, the FI portfolio (new business) has increased from about EUR 400 million per year to over EUR 1.4 billion in 2004, with approximately EUR 5 billion in active projects requiring monitoring.,,

Set against this growth, a central thrust of the EvD report is that: "Although the FI portfolio has increased over this time, resources in the Environment Department for monitoring work on FIs have not increased ... out of a Department of 18 professionals, there are 8 Environmental Specialists at present working on monitoring and support of FI environmental performance. However, these specialists are not working full-time on FIs, and their combined time on FI projects is equivalent to 3 full-time specialists. The majority of the work in ED relates to the higher risk major investment projects of EBRD.

Although there are several aspects of the work of the ED team identified in this report, which could be changed to improve their approach for FIs allowing them to focus on the higher priorities (e.g. less focus on FIs in the new EU countries), the resource issue needs to be addressed by EBRD Management if ED is to monitor the FI portfolio properly.,, (*page 20*)

- Bankwatch also recognises this problematic issue and is concerned not only about how it relates to the EBRD's FI portfolio but also to the bank's operations as such. We believe that this review of the Environmental Policy must not shy away from the resource issue within the bank's Environment Department, and that the EBRD's governors, directors and management must tackle it full on if a more comprehensive and robust policy is ultimately going to be established.

Beyond environmental risk management, and promoting environmental positives

The resource issue within Environment Department has other effects.

As the EvD report continues to state: "In addition, this problem means that the Environmental Specialists are only able to try to monitor compliance with procedures, and do not at present have the extra time to take actions to pro-actively encourage change. This is unfortunate as in the few cases where staff had been asked for technical support, they got extremely good feedback on the value of their contribution to the FI.,, (*page 20*)

The promotion of environmental change is part of the EBRD's mandate. It is also, according to the EvD report, something that the FIs themselves want to see more of: "some FIs specifically asked if the Bank could offer/promote more operations which target environment (e.g. the Bulgarian renewable energy project). There appears to a willingness by our clients to undertake environmental initiatives that has not been fully exploited by the Bank.,, (*page 4*)

- Bankwatch recommends that the section on FIs of the new Environmental Policy should contain language promoting a more pro-active approach to securing sustainable development via the FIs, who can also benefit from becoming pioneers in such developing sectors as the renewable energy sector.

Greater vigilance in Russia/NIS/ETC countries and higher standards for high-risk sectors

With expansion of the EBRD's FI portfolio in Russia/NIS/ETC countries, strong EBRD oversight will be necessary where national environmental legislation is weaker than EU standards.

As the EBRD's EvD has noted in several reports, the EBRD's equity arrangements especially can involve investments in sectors that carry potentially higher environmental risk, e.g. extractive industries such as oil and gas exploration, forestry operations, and chemical processes.

- Bankwatch recommends that the new policy should include more explicit reference to compliance with EBRD policy requirements for high-risk sub-projects in certain sectors such as the extractive industries and forestry.

Stakeholder Consultation and Disclosure Plan

If the current Policy review is to be an effective and participatory process, we ask the Environmental Department to consider the following changes to the SCDP:

- The regional workshops should feed into or run in parallel to the comment period on the first draft Policy, so that stakeholders can provide feedback based on insights gained during the consultations. It is meaningless to organise public workshops after the end of the commenting period as it is scheduled now.
- In order to have NGOs and interested stakeholders attending the regional consultations in good number, the EBRD should announce more concrete dates of the regional meetings and promote the events over the EBRD RO local mailing lists and by using other communication tools.
- At the same time, the EBRD should disclose a selection process by which it will identify NGOs for whom travel expenses to the regional workshops will be covered
- The EBRD should reach out to the good practice during policy consultations and release the second draft policy before it goes to the board for the approval.