



Board of Directors

European Bank for Reconstruction and Development
London, United Kingdom

8 April 2008

Re: Comments on the EBRD Public Information Policy Review

We are writing to express our deep disappointment with the extremely limited changes that are being proposed in the new draft Public Information Policy (PIP) circulated by the European Bank for Reconstruction and Development in February. Indeed, in some ways the draft Policy is less open than the previous policy. We are particularly disappointed since we had assumed that this review, coming relatively soon after the new PIP was adopted in May 2006, would herald in significantly greater openness on the part of the Bank.

In December 2007, the Global Transparency Initiative, along with CEE Bankwatch Network, made 55 positive, specific suggestions for improvement of the PIP, virtually none of which appear to have been adopted. In light of this lack of progress, we have chosen not to participate in the public consultations, as we do not believe this would be a productive use of our time. We are also not going to make a new set of proposals and, instead, refer Bank officials to our previous comments, almost all of which remain relevant. These were submitted during the PIP review and consultations over the implementing procedural provisions for information requests and appeals in 2006 as well as during the first stage of the PIP review in December 2007.

We note here some of the more problematical aspects of the draft PIP. The EBRD needs to adopt a true presumption of disclosure, based on a system for responding to requests for information in accordance with the following: (a) minimum process guarantees; (b) an obligation to provide all information requested subject only to a narrow regime of exceptions set out in the policy; and (c) the right to request a review of any refusal to provide information from an independent body to ensure accountability. These standards are reflected in the GTI's *Transparency Charter for International Financial Institutions: Claiming our Right to Know*, available on the GTI website (www.ifitransparency.org).

Although significant progress was made in terms of process guarantees with the adoption of the Information Requests Guide, the exceptions remain extremely problematical and this is an area where the draft PIP is, if anything, even weaker than the May 2006 policy. Furthermore, although the Information Requests Guide did establish an internal appeals system, no attempt has been made to establish an independent review for refusals to provide information.

We note that the reorganization of the policy is a positive development but there is little in the way of substantive reform.

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In our December comments we commended the EBRD for improvements in procedures for handling requests. We offered several suggestions to improve the procedural rules but none of these has been incorporated into the draft PIP. Furthermore, it is disappointing that the procedural rules have not been incorporated into the actual PIP, so that they remain somehow of a lower status.

As noted, the exceptions have, if anything, become broader. Section E on information considered confidential is now more specific, providing lengthier lists of what materials will not be released. This is the case, among other things, for confidential board documents, deliberative internal documents, documents sent to member states, the already excessively broad business confidentiality exception, and financial or business information received by the Bank.

As we have noted in our previous comments, the exceptions are a serious weakness in the policy and it is imperative that that Bank accept that what is needed is a narrower, not a broader, regime of exceptions. We are particularly concerned that the draft policy continues to provide suppliers of information with a veto over its release, something that is not considered necessary by the 70+ countries which have adopted right to information laws at the national level.

The proposed policy also appears to add a new, questionable exception, specifying that the Bank “will not disclose information about projects which it considered but in which it ultimately did not invest.”

One partial improvement is Section E.3 which provides the possibility for the Bank to release confidential information if its release would be likely to avert imminent and serious harm to public health or safety, or the environment. However, this possibility is cast in the most exceptionally narrow terms and falls very far short of the sort of public interest override called for by the Charter and in our previous comments.

The draft policy also fails to expand significantly upon the list of documents subject to automatic disclosure (i.e. even in the absence of a request). Liberalization of disclosure in the procurement area, a change which the EBRD appeared to presage in its November invitation to comment, has only very partly materialized. Section D.4.6 provides that the Bank will “subject to removal of confidential material, post its Annual Procurement Review and Engagement of Consultants Report.” However, the Annual Procurement Review is already released subject to removal of sensitive material. The draft policy also repeats the existing policy in E.1.7 when it says that the EBRD will not disclose “information related to procurement processes, including pre-qualification information submitted by prospective bidders, tenders, proposals or price quotations (other than the total contract price), or records of deliberative processes.” As a result, disclosure in the area of procurement remains limited; what is needed is a presumption of disclosure of all procurement-related information, subject to the removal of exempt material such as confidential business information.

Regarding draft country strategies, the language appears more stringent, noting for example, that “the posted documents will not contain confidential information.” This also would apply to final country strategies.

The performance requirements as introduced by the draft Environmental and Social Policy (ESP) transfer the responsibilities for disclosure of project-specific environmental information from the Bank to the clients.

Specifically, the draft ESP requires clients to release the scoping project information, including a Public Consultations and Disclosure Plan (PCDP); Environmental Impact Assessment (EIA)/ Social Impact Assessment (SIA) report; Summary Livelihood Restoration Framework; the Environmental and

Social Action Plan (ESAP) and Summary ESAP for Category A and B projects, respectively; and annual implementation reports. However, as per all the other environmental documentation produced during the lifetime of a project, the draft ESP indicates quite vaguely that “the client will provide ongoing information to identified stakeholders, commensurate to the nature of the project and its associated environmental and social impacts, and the level of public interest.” The policy thus avoids mandating disclosure of concrete types of additional environmental documentation that should be released into the public domain, such as feasibility studies, environmental audits, appraisal studies for category B projects, Resettlement Action Plans, and monitoring reports. Moreover, the draft ESP “encourages” the client “to publish regular reports to their external stakeholders on their environmental and social performance, for example as part of their Annual Report or other public document, as a separate publication, or on their website.” Overall, the language of the ESP is weak, leaving disclosure to the sole discretion of clients.

The provisions for disclosure of environmental and social information in the draft PIP support the externalization of disclosure requirements and effectively reduce EBRD’s disclosure commitments. Under the draft PIP the EBRD’s responsibility to disclose project-specific information is limited to Project Summary Documents and the Summary EIA/SIA reports for category A projects. Although the draft PIP states that “the Bank may, at its discretion, disclose other environmental and social reports and studies that it commissions from time to time, for public comment or for information, on its website,” this language is nonbinding. The EBRD does not propose any effort to release proactively the studies commissioned or produced by the Bank within the due-diligence or monitoring processes - such as gap analyses, monitoring reports, topic-specific studies and analyses commissioned from independent experts and consultants.

The draft PIP also omits disclosure requirements for project-specific information as put forward by the 2003 Environmental Policy. For example, the draft PIP no longer obliges the bank to release the summary annual environmental reports produced by the project sponsors as an attachment of the Project Summary Documents. Also the fact that the EBRD proposes to remove PSDs for inactive and cancelled projects is a step backward from the current practice.

Experience indicates that project sponsors often fail to abide by EBRD’s requirements for disclosure, public consultations and monitoring. We are therefore convinced that requiring release of project-level information such as PCDPs, full EIA/SIA reports, environmental assessments for Category B projects, ESAPs and monitoring reports on Bank’s website would strengthen disclosure of project related documents into the public domain.

Taken as a whole, we are of the view that the EBRD is completely failing to take advantage of this opportunity to become more transparent. We urge the Board to send a clear message back to the management, with instructions to propose real changes to the policy that will ensure a more open Bank.

Despite our disappointment with the extremely limited progress reflected in the draft policy, we remain ready to engage in meaningful discussion should the Bank demonstrate an intention to implement some real reforms in the area of transparency. For more information and for any questions regarding these comments, please contact:

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