



Initial Comments on the EBRD Public Information Policy Review

CEE Bankwatch Network

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Introduction

On 22 December 2010, the European Bank for Reconstruction and Development (EBRD or Bank) launched its triennial revision of the Public Information Policy (PIP). The Bank published the Public Information Policy Review 2011: Invitation to Comment calling for submission of comments on the existing PIP, adopted in May 2008. This Bankwatch submission draws heavily on earlier comments provided by Bankwatch and the Global Transparency Initiative during the 2007/2008 PIP review with amendments from our experiences with the current policy's implementation.

1. Priority issues

1.1. Information Disclosure for Financial Intermediaries projects

The EBRD informs the public of Financial Intermediaries (FI) projects that are sent to the board for approval through project summary documents (PSDs). PSDs however rarely contain more than the very basic details of the proposed FI loan and/or equity. The EBRD also rarely updates these PSDs during the lifetime of the projects, surprising given the periodic reporting responsibilities of the clients. In this context, the public is not given the opportunity to engage in FI projects.

Due to particular constraints, it is understandable that the Bank may have difficulties disclosing all the final beneficiaries of each bank intermediary project, though doing so would be in the spirit of the true presumption of disclosure that Bankwatch endorses. There is however strong public interest in disclosing information about those FI investments that are environmental category A or B if directly financed by the EBRD. Further we believe that it is indeed possible and desirable to disclose all investments made by any private equity fund in which the EBRD invests. While some funds do so voluntarily, most do not.

There are other FI project details in the public interest such as the sectoral focus of the financing, loan size, the associated environmental and social impacts and so on. We request the bank to

disclose and update in the PSDs or at a minimum annually in a separate document the following project information:

- a) FI sectoral breakdown
- b) Social and environmental impacts
- c) Environmental category A and B loans
- d) Percentage of the Board-approved amount that has been disbursed to banks and loaned to final beneficiaries
- e) Number of sub-loans made for each project
- f) Average size of the sub-loans
- g) Average interest rate of the sub-loans made for each project
- h) Emissions reduction (on energy efficiency projects)

We reiterate recommendations from the Capital Resources Review that the EBRD needs to disclose routinely qualitative, independent evaluations of FI activities to increase accountability and properly assess the extent to which the EBRD is achieving its stated goals with FI projects.

For bank equity investments, the PSDs should list the Bank's exit strategy from the project.

Project-related information

The PIP contains no reference to the Aarhus Convention, while the Bank's Environmental and Social Policy (ESP) stipulates that “stakeholder engagement should be consistent with the spirit, purpose and ultimate goals” of the Aarhus Convention. The EBRD “expects” and “will promote similar good practices amongst its client”, however there is no clearly defined requirement to the client or to the Bank itself to provide access to environmental information to interested parties. This situation should be remedied.

Regrettably, the EBRD uses no Internet-based tool for tracking project status and archiving project-related information like at other IFIs including the World Bank. Such a tracking tool would bring together relevant project information and documents in all phases of the lending cycle and make these documents readily available through an updated and searchable database.

Recommendations:

- ✓ *The Bank should establish an Internet based resource for tracking project status and all the relevant project based information and documents.*

1.2.1 Environmental and Social Action Plans (ESAP)

The 2008 ESP provides for disclosure of full ESAP for Category A projects and the summary ESAP for Category B projects by the client. However, the clients often ignores such obligations by not disclosing ESAPs. We recommend that the Bank disclose this environmental information and documentation routinely or at a minimum upon request by its clients. Further the EBRD must maintain an overview of these documents and if there is significant public interest, also disclose them.

Recommendations:

- ✓ *The EBRD should disclose Environmental and Social Action Plans, and not leave it upon the client to do so, both for A and B category projects or at minimum, should keep an overview and disclose in cases of significant public interest.*

1.2.1 Board reports for private sector projects

The current policy contains provisions for the release only of board reports for public sector projects, and this should be improved to include the private sector as well. We see the absence of such provision for private sector projects as unjustified and arbitrary. 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 significantly improve PDSs in order to fulfil goals of the Aarhus Convention on access to environmental information. If the reports contain confidential information, this can be excluded from the reports.

Recommendations:

- ✓ *The EBRD should disclose public sector board reports on a routine basis;*
- ✓ *The EBRD should make publicly available board reports for private sector projects.*

1.2.2 OPER reports disclosure

It is critical that the public is informed about project results and evaluations carried out by the EBRD. The EBRD should release full versions of its OPER reports for public and private sector projects or at least their summaries within 6 months from the evaluation mission. Without these it is impossible to verify what if any the EBRD learns from the projects it finances. There is no issue of commercial confidentiality here and other IFIs do release such evaluations.

Recommendations:

- ✓ *The EBRD should disclose OPER reports for the public and private sector projects within 6 months from the evaluation mission.* □

1.3 Project-specific information disclosure

1.3.1 Board minutes

We welcome the EBRD's commitment to release minutes of board meetings and agree it is an important step towards good governance. However, we also hold that the public has the right to see how they are represented at the Board to hold it accountable for its decisions. In this vein, the EBRD should also include as part of its minutes a record of voting; the opinions expressed; and where relevant written statements prepared by Executive Directors.

While minutes provide a legal record of the decisions taken, they do not reflect the discussion in its entirety and for this reason, the EBRD should also publish transcripts of Board meeting discussions.

We are pleased that Board minutes are accessible at the EBRD's website. However it is difficult to locate the minutes on the EBRD website structure without the help of the search engine. For better clarity we recommend that Board minutes are uploaded to a dedicated webpage that is linked with other sections of the site.

We also request the EBRD to release the minutes in a timely fashion after the Board approves the minutes at its next meeting but no later than 15 working days after approval. Currently Board minutes are sometimes made available online with a delay of more than two months.

Recommendations:

- ✓ *The PIP should require that minutes of board meetings include a record of voting, opinions expressed and written statements prepared by EDs where applicable.*
- ✓ *The record of voting should list abstention and negative votes of those Directors who wish to make them publicly available.*
- ✓ *The Board minutes should be released after their approval by the board. The disclosure date should not exceed 15 working days from the effective date.*
- ✓ *The EBRD should release summaries and transcripts of Board discussions within 15 and 30 days of the meeting, respectively.*

1.3.2 Private Sector Project Summary Documents minimum release

More projects in high-risk industries like mining and energy are being categorised as B projects, and so permitting only a very short time for consultations with interested parties. To ensure effective participation, either the 30 days requirement should be extended to 60 days or there must be other measures introduced to allow for adequate consideration of public concerns and ensure that they are released immediately after the project has passed its Initial Review by EBRD Management.

In line with EBRD commitments to promote meaningful and informed stakeholder consultations “consistent with the spirit, purpose and ultimate goals” of the Aarhus Convention” the PIP should provide information about its appraisal process prior to PSD disclosure. For example, stakeholders should be informed about the process of appraisal and consulted during the due diligence process, especially if there is a keen public interest in the project or the operations of the client. So far EBRD's approach is inconsistent and varies from one project to project.

Example:

The Centerra Revolving Debt Facility regional project (<http://www.ebrd.com/english/pages/project/psd/2010/41543.shtml>) that was recently approved by the EBRD received category B classification and the interested stakeholders were not properly consulted, even though they had expressed significant interest.

Recommendations:

- ✓ *The Bank should ensure effective public participation for category B projects, especially in high risk industries, by releasing PSDs 60 days prior to Board consideration and involving*

interested stakeholders in the due diligence process and soon after the project has passed its Initial Review by Bank Management

1.3.3 Release transition impact ratings as part of a PSD

In line with its transition mandate, EBRD projects must be oriented to achieve transition impact. Projects that the Bank considers to finance are therefore assessed for their transition impact potential and the risk to transition impact. We believe that the qualitative transition impact ratings and the 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. We suggest that the rating is released as a part of the PSDs.

Recommendations:

✓ *Transition impact rating should be released as a part of the Project Summary Document.*

1.3.4 Derogations to PSD disclosure

In 2010 alone, a number of derogations to the timely release of PSDs were noticed.

The PIP allows for derogations to timely-released PSDs in several circumstances outlined in the policy. The policy however fails to ensure that the public is informed about the justification of such derogations. We therefore ask that the PIP integrates a provision that details how and when derogations will be disclosed to the public. We suggest that the public is informed about such derogations as early as possible.

Moreover we suggest that details about derogations appear in the EBRD's Report on PIP implementation. Specifically the EBRD should list names of all projects that were granted derogations and the reasons for such derogations. Currently only a handful of unidentified projects that have been derogated appear in the report.

Also under the current PIP, the terms for derogations to PSDs are not identified. It is assumed that with the publication of a PSD in case of derogations these happen after project signing. The PIP should provide concrete guidance for releasing PSDs for derogated projects on the day of and not later than three days from project approval.

We reiterate that it is questionable whether multiple exceptions to disclosure involving a single company - especially a controversial one like MOL - can be justified. The Report on implementation of the PIP should list extended justifications for such multiple exceptions.

Example:

The Centerra Revolving Debt Facility regional project has appeared in the list of the projects for the Board of Directors meeting in late October 2010 with no PSD disclosed (<http://www.ebrd.com/english/pages/project/psd/2010/41543.shtml>). The project has raised great interest on the local and international levels, given the company's history of operations in Kyrgyzstan. Information requests and letters were submitted to the EBRD and Secretary General.

One month after the project's approval, the PSD appeared on the Bank's website and the delay was described as a derogation.

Recommendations:

- ✓ *The Bank should provide justification for derogations to the timely disclosure of PSDs as soon as it is released to the public.*
- ✓ *The PIP should ensure that the names of all the projects that were granted derogations appear in the Report on PIP implementation along with the reasons for these derogations.*
- ✓ *The PIP should provide concrete guidance for releasing PSDs for derogated projects on the day of and not later than three days from project approval.*

2 General Comments

Information on policies and strategies

2.1 Several stage review processes

In current operational and sectoral policy reviews, the EBRD invites public comments on the basis of an invitation to comment in the first phase and on a draft policy in the second phase. This is however a quasi two stage commenting process, because instead of outlining proposed EBRD changes to policy directions and standards at the outset of the review, these are delayed until after the EBRD has received the first public input. Often such public submissions are fundamentally different than the EBRD's vision and the ensuing draft juggles to incorporate at least some public comments. During the second phase of the commenting period, comments are often recycled because initial comments were not taken on board and also without knowing for what reason the comments were rejected. This system undermines constructive policy dialogue and inhibits the review process.

The review process should therefore consist of at least two stages in which the public is allowed to comment on two consequent drafts or a well-elaborated issue paper. In the first stage the EBRD should produce a policy/strategy draft that outlines future policy directions and submit for public comment. In the next stage, a revised draft policy/strategy should be drawn on the basis of the first consultation and then submitted for additional consultation. In parallel, consultation meetings or workshops should be organized to enable a more focused exchange of views. The final revised draft policy/strategy should be made available to the public with a summary of comments received and staff responses before the policy considered for final Board approval.

Recommendations:

- ✓ *EBRD should adopt a several stage policy/strategy review process consisting of commenting on two consequent drafts or well-elaborated issues paper and consultation meetings.*
- ✓ *The final revised draft policy/strategy should be made available to the public with a summary of comments received and staff responses before the policy considered for final Board approval*

2.2 Disclosure of public comments

If the EBRD seeks the active and thoughtful participation of stakeholders during the development and review of its strategies and policies, it should also let the public know whether their comments and other external inputs were received and how they have been considered. Currently external comments have not been subject to public scrutiny to the full extent during the review process. The EBRD should therefore release all incoming public comments in their original form over the course of the policy or strategy review on a dedicated website.

Recommendations:

- ✓ *The PIP should ensure that all incoming public comments are released in their original form in the course of policy or strategy reviews.*

2.3 Disclosure of second draft policies and strategies

The current PIP does not require that a second draft policy or strategy be released. As a result, the public gets to know how external comments have been incorporated only after the Board's approval, preventing them from further engagement in the decision-making process. To encourage a constructive and continued dialogue with the stakeholders throughout the review, the EBRD should offer a second draft of policies and strategies for external comments. The draft should be made publicly available at the minimum 10 working days prior to board approval.

Recommendations:

- ✓ *The EBRD should disclose second draft policies and strategies 10 working days prior to their board approval.*

2.4 Disclosure of Management's response to comments

Timely disclosure of Management responses to comments is another element of an effective consultation process. The EBRD should release the Management's response to comments prior to Board approval, at the time the final draft policy or strategy is released.

Recommendations:

- ✓ *Management responses to comments ought to be released prior to Board approval, at the time the final draft policy or strategy is released.*

2.5 Disclosure of old policies and strategies

Currently only policies and strategies in effect are available on the EBRD website. Archiving and publicly sharing past policies and strategies is an important way of documenting progress in translating a commitment to transparency, sustainable development and accountability in policymaking. An online policy archive may serve as an important resource for the public, academics and researchers. Ongoing access to EBRD policies would increase public awareness of the institution and empower citizens to participate more effectively in EBRD operations.

Recommendations:

- ✓ *The EBRD should make available old policies accessible from an online archive to preserve the results of the policy development.*

2.6 Regular updates to the comprehensive schedule of policies and strategies

It is welcomed that the EBRD maintains a rolling list of policies and strategies scheduled for review. However this list is not comprehensive, and the schedule is not updated on a regular basis. This creates confusion for stakeholders who cannot plan accordingly and well prepare input during these reviews.

Recommendations:

- ✓ *The online schedule of upcoming policies and strategies for review should be updated as soon as concepts are approved by the Management.*

2.7 Country Strategy Action Plans

If the Country Strategies are to bring effective results, the EBRD should include an action plan for their implementation. As a partner in the decision-making process over Country Strategies, the public should have a right know about its implementation.

Recommendations:

- ✓ *The EBRD should include an action plan on implementation of the strategy within Country Strategy documents.*

2.8 Public participation in the institutional reviews

The recent fourth Capital Resources Review was initially planned without public consultation. On request the EBRD organised both a public commenting period and a consultation meeting at the EBRD, moves appreciated by civil society. We recommend future institutional reviews follow this example as well. As part of this the final version of the CRR4 document should be released – with any confidential information redacted if necessary - whereas only the summary has so far been released this time.

Recommendations:

- ✓ *The EBRD should open the Capital Resources Review to the public and adopt formal provisions for its consultative participation.*

2.9 Country strategies

Since a majority of EBRD operations are in former Soviet union countries, draft documents produced during the revision of country strategies should be available in Russian.

Example:

Many public organisations in Ukraine often do not speak English and often are unable to afford translating strategies. And as translations are time-consuming this can inhibit meaningful engagement by interested parties.

Project-related information

2.10 Annual Environmental Reports

The current practice of including summary annual environmental reports (AER) in PSDs is confusing as the information is neither well-structured nor visibly presented. The brevity of the environmental updates has little informative value to affected people and stakeholders. Moreover AER summaries are often missing from PSDs. In order to ensure quality information flows to the public, AERs should be released on an annual, routine basis and in their entirety. AERs should not be included in PSDs but rather disclosed as stand-alone documents.

Recommendations:

- ✓ *The EBRD should routinely disclose AERs as stand-alone documents and linked from the project's PSD.*

2.11 Translation of Project Summary Documents

We recognize the EBRD's commitment to make PSDs accessible to all the interested parties, and the general public by providing translation to national languages. We note though that translated PSDs do not always include identical information to English originals and are rarely updated.

Recommendations:

- ✓ *Translated PSDs should bear the same amount of information as English originals.*
- ✓ *Translated PSDs should be routinely updated.*

2.12 Routine updating of the Project Summary Documents

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 minimum annually.

- ✓ *EBRD should update PSDs for new information on implementation and changes in the project as soon as they occur.*
- ✓ *With active projects the EBRD should update the PSDs at a minimum annually.*

2.13 Routine disclosure of factual and technical documents related to project preparation

As mentioned earlier automatic disclosure of project-related information in all the phases of the project is a key element to effective public participation in the decision-making process. The current PIP has no provisions for disclosure of factual and technical documents prepared in the early stages of a project, which prevents timely responses and comments from the affected communities. This documentation should be made publicly available through the online PSDs or more conveniently, inside a project profile within the project tracking system.

Recommendations:

- ✓ *Project based factual and technical documents should be available online and linked to the project PSD*

2.14 Information about co-financing in the PSD

We propose to add a summary of the main elements of cofinancing for a given project where applicable. Such information is quite important from the point of view of estimating the risk the EBRD assumes and how it is distributed between participants.

Example:

The PSD for the South Ukraine Transmission Project¹ does not indicate whether the project has co-financing. At the same time the website of the European Investment Bank includes a document for the 750kV Zaporizhzhia-Kakhovska Line². Though names differ, it is indeed the same project as mentioned by the EBRD. As this project is in the environmental category A, it is essential that full information is available in the PSD.

Recommendations:

- ✓ *The PSD should include information about co-financing where applicable.*

2.15 PSDs for multi-project facilities

Currently disclosure of important information about what projects are financed under multi-project facilities and projects on the regional level are not always included in PSDs. We recommend the EBRD unifies this practice and would-be financed (sub-) projects listed and described in PSDs.

Example: The PSDs for the EBRD-Italy Western Balkans Local Enterprise Facility³ and Centerra Revolving Debt Facility⁴ do not have descriptions for projects (to be) financed while Mid-Sized Corporate Support Facility⁵ PSD does have.

- ✓ *The PSD for the multi-project facilities should include clear information on the projects to be financed.*

2.16 Initial discussion papers

The EBRD should disclose in its entirety all the initial discussion papers, including the Concept Clearance Memorandum, Concept Review Memorandum, Environmental Screening

¹ <http://www.ebrd.com/english/pages/project/psd/2009/40147.shtml>

² <http://www.eib.org/projects/pipeline/2009/20090117.htm>

³ <http://www.ebrd.com/english/pages/project/psd/2005/36318.shtml>

⁴ <http://www.ebrd.com/english/pages/project/psd/2010/41543.shtml>

⁵ <http://www.ebrd.com/english/pages/project/psd/2009/40201.shtml>

Memorandum, draft Environmental Summaries, Initial Environmental Examinations, Final Review Memorandum.

Recommendations:

- ✓ *Initial discussion papers should be made available in their full extent and at the time they are produced.*

2.17 Loan contracts

The EBRD should disclose all documents related to the loan agreement between the EBRD and the project sponsor, including the client's Environmental Action Plan, loan contract and social and environmental impact assessment documents.

Recommendations:

- ✓ *The EBRD should disclose all documents related to the loan agreements between the EBRD and the project sponsor.*

2.18 Project implementation reports

The PIP should require the disclosure of all project implementation reports, including Annual Environmental Reports, Periodic Environmental Audits and Exit Audits.

Recommendations:

- ✓ *The EBRD should disclose all project implementation reports, including Annual Environmental Reports, Periodic Environmental Audits and Exit Audits.*

2.19 Monitoring reports

We advise that the EBRD follows the example of the European Investment Bank and releases at a minimum environmental information gathered by the Bank during project monitoring. This includes:

- ✓ Monitoring Mission Reports
- ✓ Project Progress Reports
- ✓ Project Completion Reports
- ✓ Environmental studies, provided by a project promoter or other third party

2.20 Topic-specific studies and analyses

The EBRD should release topic-specific studies and analyses elaborated or commissioned from independent experts and consultants for the EBRD (such as the recent gender analysis). This would follow the positive example of the EIB in such an instance.

Example:

The technical, economic and environmental due diligence of Zaporizhzhia-Kakhovska and Novoodesskaya-Artsyz lines (Ukraine) was conducted by an independent consultant Mercados (International Energy Markets S.A.) with funding from the Government of Spain (EUR 52,000).

However it was never made available to civil society representatives even though it was requested.

Recommendations:

- ✓ *The EBRD should release topic-specific studies and analyses elaborated or commissioned from independent experts and consultants.*

General Institutional Information

2.21 Staff directory

The current EBRD website does not list full contacts to all EBRD staff. To enable the public to communicate openly with EBRD staff, the EBRD should release and regularly update e-mail, telephone and fax contacts to its employees on its website. In case of not releasing the contacts, the EBRD should offer compelling reasons why it chose not to do so.

We welcome that e-mail addresses for constituency offices are publicly available. However we note repeated failures with delivery of messages sent to these constituency e-mail addresses. Since in many cases this is the only opportunity to reach the EBRD it is impossible to reach some constituencies. We encourage the EBRD to enhance opportunities for the public to reach its Board and as well disclose fax and telephone numbers to Constituency offices so that the public can better communicate with their representatives.

And while the Information Requests Guide appoints Resident Offices to act as alternate contact points, the online list of EBRD Local Offices - <http://www.ebrd.com/pages/about/contacts/regional.shtml> - does not include e-mail contacts. At the minimum the EBRD should establish a central e-mail point of contact for Resident Offices and publish in its online directory.

Recommendations:

- ✓ *Complete staff contacts directory, including contact emails for should be make publicly available through the EBRD's website.*
- ✓ *The EBRD should disclose the fax and telephone numbers to the Constituency offices so that the public can better communicate with their representatives.*
- ✓ *A central e-mail contact should be established for every Resident Office and released at the online directory.*

2.22 Visits of EBRD staff to countries of operation

We commend the Bank for maintaining an online record of EBRD Board visits to countries of operation. Meetings organised with civil society on such occasions have improved dialogue between the EBRD and stakeholders. For this reason we recommend that the PIP also discloses visits of senior management to countries of operation.

Recommendations:

- ✓ *The PIP should require the disclosure of a schedule of the EBRD senior management visits to countries of operation with adequate notification.*

Accountability and governance

2.23 Annual Anti-Corruption Report

We welcome the annual publication of the EBRD's Anti-Corruption Report. The report should further include general information on allegations of fraud and corruption filed against EBRD staff or EBRD-financed operations, their current review status, the key findings of investigation, and a description of how the complaints were addressed.

Recommendations:

- ✓ *The Anti-Corruption Report should include general information on allegations of fraud and corruption filed against EBRD staff or EBRD-financed operations, their current review status, key findings of investigation, and description of how the complaints were addressed.*

2.24 Project Evaluation Department Documents

We appreciate that the EBRD encourages participation of stakeholders during the completion phase of the project cycle by disclosing select documents of the Project Evaluation Department (EvD). However in stipulating that disclosing EvD documents is subject to commercial confidentiality, the EBRD limits the full and well informed participation of stakeholders in the decision-making process. The business confidentiality interest should not override a public right to information. The EBRD should therefore clear the disclosure of EvD documents from any exception clauses.

Recommendations:

- ✓ *The documents produced by the Project Evaluation Department should be released in their entirety and without confidentiality exceptions.*

For more information regarding these comments please contact:

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