CEE bankwatch network

EBRD policy comments

June 2012

Comments and recommendations on the EBRD Draft Mining Strategy – Shortened version

For more information

Vladlena Martsynkevych
Central Asia officer
vladlena@bankwatch.org

Overall direction of the strategy

What is lacking in the draft[1] is a vision and strategic approach for long-term sustainability. Although the strategy should implement "responsible mining", there is no definition of what exactly is meant by this notion and how it is going to be implemented.

The Bank foresees growth in the mining sector and sees its involvement as crucial in this process. At the same time the Bank recognizes that mining can cause significant adverse environmental and social impacts, including permanent ones, and that no single mine can be sustainable since it exploits a finite local resource. Specifically the draft mining strategy identifies the systematic problems of: – need for diversification of the economy in some countries of operations (COOs) and the negative impact of the mining sector on the competitiveness of other non-natural-resources sectors; – significant negative economic and environmental impacts in the future when phasing out and rehabilitating the mining areas in countries with weak legislation; – control over natural resources by special interest groups with close ties to governing bodies and political agents which have negative impacts on the countries' transition progress, the impact on competition and the overall democratic processes and inclusion of local communities in decision-making processes.

A systematic change in project selection, design, development, implementation and closure of the operations is needed, and the EBRD should show how it intends to bring a positive change and introduce positive social and environmental transition, to confirm the added value of the Bank's support for the sector.

Recommendation

On the policy level adopt the practice of strategic assessment as part of country strategies, including: a) mining sector's potential risks and impacts including costs and benefits from sector development for the country and affected regions, including systems in place to prevent secrecy by the beneficiaries or the use of tax havens,[2] b) thorough assessment of the alternative scenarios for development of the countries' natural resources; c) democratic practices for controlling mining operations and sharing benefits.

1 Draft Mining Strategy of the EBRD: http://www.ebrd.com/pages/about/policies/miningstrategy.shtml

2 Countries in which EBRD clients are based need to have a requirement for a substantive local presence if the various initiatives against tax havens are to be meaningful.

On the project level the EBRD must adopt: a) thorough assessment of the alternatives on the project level including "no exploitation" alternatives; b) early involvement and consent of the local communities in project development, not merely as part of the Environmental Impact Assessment process, but much earlier, and covering whether the project should go ahead at all; c) that closure and decommissioning costs, other business opportunities, re-education, are reflected in the cost-benefit analyses of the project and a democratically controlled reserve fund is created for managing the transition and benefits sharing.

Measuring sustainability of the projects

Currently, it is not clear what indicators will be used for measuring the sustainability of mining projects. The Bank should measure and monitor performance against the overarching vision statements set out above, including through the monitoring of selected physical indicators and on-the-ground impacts in addition to the transition benchmarks over the strategy period. The bank should publish with the project summary document a projects' expected and actual contribution to the on-the-ground and sustainability goals and update these annually.

Recommendation

The Mining Strategy should introduce the following mining-related sustainability indicators to look at the sector as a whole in a country and on the project level where applicable:

- Percentage of people living above the poverty line, especially in countries where extraction of natural resources takes place and export of commodities is the main driver of economic development.
- Percentage of properly recultivated closed down mines.
- Percentage of mining waste facilities in compliance with their discharge permits and with relevant legislation for management of mining wastes, eg. the EU Directive 2006/21/EC.
- Presence of an effective monitoring system for mining waste facilities – in use and abandoned – and health monitoring of population exposed to the negative impact of extractive industries facilities.

Resource Efficiency and Sustainable Consumption

Natural resource use-efficiency and sustainable consumption have not been deemed worthy of a separate description in the Strategy, but how to do more with less should be the centrepiece of the EBRD's approach. Recent scientific assessments[3] make it increasingly evident that significant innovation in both the supply (production) and demand (consumption) sides of the market is needed.

As the EU Resource efficiency Roadmap (COM(2011) 571 final) points out "The World Business Council for Sustainable Development estimates that by 2050 we will need a 4 to 10 fold increase in resource efficiency, with significant improvements needed already by 2020. Some dynamic businesses have recognised the benefits of a more productive use of resources, yet many enterprises and consumers have not yet realised the scale and urgency of the required transformations. Promoting efficient use of resources makes a lot of business sense and should help improve their competitiveness and profitability. It is therefore an integral part of the EU's agenda for global competitiveness. It also helps ensure a sustainable recovery from the economic crisis and it can boost employment."

The majority of EBRD COOs need much more research on resource efficiency — notably metal scrap reuse for obtaining steel that could be

3 Millennium Ecosystem Assessment, the Global Environmental Outlook and the 4th Assessment Report of the Intergovernmental Panel on Climate Change

beneficial for waste reduction and creation of new jobs. Improved waste management could significantly reduce CO2 emissions.

Recommendation

A separate sub-section on "Resource Efficiency" that takes into account worldwide commitments and proposals for a transition to a sustainable and resource efficient economy should be included. The EBRD Natural Resources department should increase cooperation with the Municipal Environmental Infrastructure and Industry, Commerce and Agribusiness departments in the Strategy, in order to ensure the integration of the reduce-reuse-recycle principle in appraisal, reporting and monitoring of the projects.

Thermal and coking coal financing

The EBRD has a crucial goal of promoting a transition to a low-carbon society, and reducing CO2 emissions needs to be achieved throughout every sector. 50-70 percent[4] reductions in CO2 emissions are needed by 2050 globally. In the mining sector, although there are significant emissions from all mining activities, the most significant issue concerns coal mining.

While the Bank's Draft Strategy covers all ores and minerals extraction (but not oil and gas) as well as coal mining activities, it does not covering carbon-related issues like coal combustion's contribution to climate change. In a sense, the bank has indicated its willingness to engage more in financing coal mining without taking the responsibility for the future emissions it will trigger.

It makes no sense to separate coal mining from its use. All coal which is extracted will be combusted and the EBRD cannot wash its hands of the responsibility for the CO2 emissions simply by separating mining from combustion. In addition, in some cases coal mining projects have directly supported capacity expansion of coal thermal power plants, such as Kolubara in Serbia. In 2011 the bank supported a so-called 'environmental improvement' project, which in fact enables expansion of production, at the Kolubara lignite mine and in March 2012 the Bank released a project summary document for Kolubara B TPP[5], a new 750 MW power plant. Another example is Mongolia's Ukhaa Khudag (UHG, part of the Tavan Tolgoi coal deposit) high quality coking (243.6 Mt) and thermal coal (183.9 Mt)[6] deposit. In 2009 the EBRD took an equity stake and provided a loan for the coal washing plant in 2010. Bank financed coking coal projects totaled EUR 291 million during the 1999-2011 period, including two EUR 111 million investments for a coking coal project in Mongolia.

It is unclear how the Bank can justify being involved in these projects when the direct emissions during the period of extraction and operations exceed all implemented savings and energy efficiency measures. These climate impacts are only the top of the iceberg as both the Kolubara and the UHG projects have severe environmental and social impacts[7].

It is often objected that many of the transition countries have coal and they are going to use it anyway. That may be so, but it is not the function of public money to finance them in doing this.

Recommendation

The EBRD must halt financing for coal mine projects that imply an expansion of facilities. Financing for

4 50 percent comes from the European Council Conclusions 29/30 October 2009. The 70 percent figure comes from: Meinshausen, M. et al. (2009) Greenhouse-gas emissions targets for limiting global warming to 2° C, *Nature*, 458, 1158-1162 and Allen, M.R. et al. (2009) Warming caused by cumulative carbon emissions towards the trillionth tonne, *Nature*, 458, 1163-1166.

5 Kolubara B TPP project summary document: http://www.ebrd.com/english/pages/project/psd/2012/43763.shtml

6 Environmental and Social Impact Assessment: UHG Phase II Project, Energy Resources LLC, February 26, 2010: http://bit.ly/Mogue0

7 Project pages: http://bankwatch.org/our-work/projects/kolubara-lignite-mine-serbia and http://bankwatch.org/our-work/projects/mining-boom-mongolia

improvements of environmental and social standards – for example health and safety – may take place as long as they do not result in the prolongation of the facility's operation or increases in production, and if the client's obligations are explicitly written in the contract and results are transparently reported to the public.

Commodity export dependence

The Bank acknowledges there are many challenges in the mining sector, among these the dependence of an economy on commodities exports, but it does not make it clear how it will address this problem.

Mongolia is the leader in the bank's mining investments with EUR 176 million since it became an EBRD country of operation in 2006. BY 2010 the natural resources sector (including oil) received more than 70 percent of investments in the country by 2010, and the proportion has grown since then.

In comparison the EBRD invested EUR 191 million in the whole SEE region and EUR 174 million in Central Asia for mining between 1999 and 2011[8]. According to the Draft Mining Strategy, in Russia since 1999 mining projects have amounted to EUR 91 million, comprising a significantly smaller proportion of the overall portfolio for the country, which has a net business volume of EUR 17.4 billion. These figures clearly show the heavy bias in the EBRD's portfolio for Mongolia and the urgent need to increase the bank's efforts to balance its investments by redirecting support for other sectors of the economy.

The situation is similar in Kyrgyzstan where the Kumtor gold project is responsible for 10 per-cent of the country's GDP and constitutes 40 per cent of total exports and 50 per cent of in-dustrial production[9]. In Armenia, too, for in 2009, mineral exports constituted 40 per cent of the total exports of the country.[10]

Recommendation

The mining strategy needs to identify countries that are highly commodity dependent (or may become so) and de-prioritise them for investments into mining and infrastructure related to mining.

Project Appraisal

The Strategy has "Area of Influence" to give particular attention to the appraisal of environmental and social baseline conditions for the proposed project.

Oyu Tolgoi, Mongolia is a globally significant copper and gold mine in the South Gobi desert that is being considered by the EBRD for financing. As of April 2012, the overall construction of the OT project was reported to be 82.2 percent completed, with the first commercial production expected in the first half of 2013. However, no ESIA that meets international standards has been disclosed for public consultations, in spite of this project including potential problems with water availability, biodiversity impacts, resettlement of herders without a resettlement action plan in place, the cumulative impact of the mushrooming mining projects in the Gobi Desert and the loss of the baseline conditions before project appraisal.

8 Draft Mining Strategy of the EBRD: http://www.ebrd.com/downloads/policies/sector/draft-mining-strategy.pdf

9 EBRD Strategy for Kyrgyz Republic, 2011: http://www.ebrd.com/downloads/country/strategy/kyrgyz.pdf

10 Armenia Mining, Zoi Environment Network: http://www.zoinet.org/web/sites/default/files/publications/Armenia-FINAL.pdf

Recommendation

The EBRD must not be involved in the financing of mining projects if they are violating its policy provisions and if the social and environmental baseline conditions are altered before project assessment.

"No-go zones" and operations in critical habitats and protected areas

The Environmental and Social Policy (ESP) of the EBRD has provisions for projects that impact critical habitats and protected or designated areas[11]. These provisions have not been effective in ensuring adequate protection, since implementation depends too much on state authorities and the bank's clients.

Important safeguards such as transparency in decision-making, strong regulatory capacity or functioning anti-corruption institutions are still lacking in many of the EBRD's countries of operation. Additionally areas of high biodiversity value or critical habitats often lack protection status. There are also sites that are important water source areas - however, state attempts to protect them tend to meet opposition and strong lobbying efforts by mining companies, as is the case with the Mongolian Law to Prohibit Mineral Exploration and Mining Operations at Headwaters of Rivers, Protected Zones of Water Reservoirs and Forested Areas.

The EBRD claims to have an unofficial list of areas where the mining activities (or other activities) will not happen, for example UNESCO heritage and Ramsar sites. However, it would be much more transparent and clear if the Bank made this list official and expanded it according to the following recommendation to avoid selected implementation.

11 EBRD Environmental and Social Policy, Performance Requirement 6, paragraphs 13-15

Recommendation

The EBRD Mining Strategy (and later on the bank's ESP) should establish "no-go zones" for:

- areas protected by national or international law, such as national parks/reserves, Natura 2000 sites and UNESCO World Heritage sites;
- areas not protected by law but which are (i) high conservation value areas, critical ecosystems, water-catchment areas and biological corridors; (ii) food security and traditional livelihoods; and (iii) territories of indigenous peoples where full free prior and informed consent has not been obtained, following the recommendations of the IUCN from the World Congress in Barcelona in 2008.

EITI and revenue-sharing

It is proposed by the experts that the Extractive Industry Transparency Initiative (EITI) be expanded so that the companies would provide disaggregated reporting requirements including environmental and social aspects and contracts transparency.

Issues of revenue and benefit-sharing do not receive any attention in the strategy. These arrangements between mining projects, central governments and local communities can become a lingering cause of resentment if the mining profits are not foreseen to be equitably shared and a lack of transparency in decisions on them occurs.

An EBRD evaluation of the extractive industries highlighted "sustainability funds" as tools recently used by the Bank for ensuring long-term development planning that were in resource-rich countries. However, these experiences were not included in the strategy, analysed in terms of potential further value or the changes needed in this approach even though this evaluation called for proper use of funds and transparent reporting.

Recommendation

The EBRD should ensure that contract transparency and disaggregated environmental reporting are required as part of its investments.

The strategy must include lessons learned from "sustainability funds" implementation, and the operational priorities and alternative revenue and benefit sharing possibilities should be identified and described. Implementation must be in line with local communities' plans for development, giving rights over decision-making and improving transparency.

Gender impacts of mining projects

The strategy outlines a variety of negative environmental and social impacts of mining projects and claims that the ESP is robust enough to address these. However, there are no clear commitments made as to how the bank will eliminate negative impacts on gender and ensure positive ones.

The strategy, like the ESP, is very superficial on gender. It focuses on loss of or barriers to economic benefits associated with mining, such as employment or spin-off business opportunities. However, it remains silent on the more brutal impacts, like decreased safety and increased sexual harassment for women, the rise in prostitution or the spread of sexually transmitted diseases (STDs), which accompany mining developments. For example, according to a study by the Asian Development Bank: "a rapidly expanding mining sector and improvements in the transportation network in Mongolia create a potential high-risk environment for the spread of HIV.[12]

In 2006 Bankwatch studied the gender impacts of two natural resources projects and requested increased attention to such problems.[13] Six years later, in spite of assessment matrices having been developed, the gender impact of mining projects is still not always assessed properly. For example the ESIA for the Ukhaa Khudag coal mine project in Mongolia makes only brief and ad hoc references to gender impacts and does not discuss adequate measures for addressing these.

Recommendation

The mining strategy should make concrete commitments as to how it will improve the gender impacts of mining projects. The EBRD should also either come up with a binding Gender Policy or with a Gender PR as part of its ESP.

Acceptance by stakeholders and increased transparency

Companies should obtain the free, prior, and informed consent (FPIC) of indigenous peoples before mining exploration begins and prior to each subsequent phase of mining and post-mining operations. Consent must also be obtained from other local communities in advance of the project preparations, with all alternative scenarios for the region developed, including "zero" project development if people and communities do not accept the mining perspective. It is important that 'responsible mining' does not force mining on local populations. The Amulsar gold project in Armenia is an example of unwillingness by the project company to admit that the town of Jermuk is in the affected area, as its population envisages tourism-based regional development and may not agree with the project.

FPIC as mandated by the UN's Declaration on

12 Asian Development Bank report on Mongolia: HIV/AIDS Prevention in ADB Infrastructure Projects and the Mining Sector. ADB (2008) : http://bit.ly/JTbwCe

13 Boom Time Blues: Big oil's gender impacts in Azerbaijan, Georgia, and Sakhalin, 2006: http://bit.ly/KqqaoF

Indigenous Peoples is the best practice. However, after FPIC has been achieved, active citizen engagement in the EIA and project oversight throughout is crucial.

Current bank policies encourage but rarely oblige its clients to be transparent to those most immediately impacted by its projects. The effectiveness of mining companies' information and consultation processes is questionable, considering that even the local administration of a town near to a coal mine in Mongolia was unaware of the impacts of coal extraction and combustion. Environmental and Social Action Plans are disclosed optionally – except in cases of environmental category A projects – and local communities are rarely part of designing them.

Recommendation

The bank needs to incorporate FPIC as best practice for mining operations in its Mining Strategy and later in other relevant policies.

The Mining Strategy, Public Information Policy and Performance Requirement 10 of the ESP should be changed to require more inclusive preparation and transparent reporting of progress on Environmental and Social Action Plans for mining projects.

Mining Strategy consultation, review and approval process

In the current review process, the EBRD has invited public comments on the basis of the draft strategy. Previous experience with submitting comments and participating in consultations shows that public submissions may fundamentally differ from the EBRD's vision, and it is important to ensure that these opinions are incorporated and addressed in the public comments.

The current process does not allow stakeholders the opportunity to see all the comments provided to the bank and the replies from bank until after the strategy is approved. This undermines constructive policy dialogue and inhibits policy development and public participation.

The Mining Strategy has been under preparation for the last two years. Workshops and discussions took place in 2009 in London, after which Bankwatch prepared recommendations based on experience with controversial mining projects, and related developments have been communicated regularly to the bank. However, until the draft strategy document was released, the public was not able to get any clear information on what would be in the document, let alone the main strategic directions.

The EBRD's Public Information Policy specifies a public posting of strategies to be review on the bank's website for a period of 45 calendar days for comments and then after the strategy has been approved the release of the Report on the Invitation to Comment. The Mining Strategy should set guidance for very environmentally and socially harmful activities, and so the consultation procedures should be improved and the 2013 PIP revision should take into account this recommendation as well.

In terms of process, there is a precedent from the European Investment Bank that we would like the EBRD to follow. The revision of the EIB transparency policy consisted of two stages and after timeline for the review was established, the bank solicited public inputs on the existing policy. These comments were used in forming the first policy iteration, and during the second stage the EIB provided again an opportunity to comment on the new policy proposal. The views were considered before the final policy document was published. At both stages the EIB responded to public comments and disclosed these responses. We consider this process to have been of a very high standard and we ask the EBRD to follow such a process for the Mining Strategy revision.

Additionally the Strategy's environmental and social aspects, as well as disclosure of information, are subject to other bank policies that will be revised in 2013. The EBRD therefore needs to provide additional commitments in its Mining Strategy on how it will take into account environmental and social issues not adequately covered by the current ESP.

Recommendation

To have the final revised draft strategy made available to the public with a summary of comments received and staff responses *before* the policy is considered for final Board approval.

Concluding recommendations

In conclusion, we recommend that the EBRD, as a public institution with a transition mandate, should bring sustainability and benefits to its countries of operations as follows:

- Revise the strategy to give a clear strategic direction and address the systematic problems in the sector (eg. diversification, rehabilitation, weak governance) on the policy and project levels;
- include indicators to measure sustainability of mining projects;
- incorporate resource efficiency in line with international commitments and proposals in transition to resource efficient economy;
- discontinue financing for coal mining projects;
- avoid financing that locks resource-rich countries into commodity export dependence and diversify financing to other sectors of the economy;
- abstain from financing mining projects if the social and environmental baseline conditions are altered before project assessment;
- establish "no-go zones" for mining activities in biodiversity-rich and environmentally vulnerable areas, as well as robust independent mechanisms for assessment and monitoring of negative impacts on valuable ecosystems and species;
- ensure contract transparency and disaggregated environmental reporting;
- include lessons learned from "sustainability funds" implementation and discover revenue and benefit-sharing possibilities in line with local communities' plans for development, giving them rights over decision-making and improving transparency;
- Include FPIC as a precondition for mining projects and increase transparency for affected communities;
- Make clearer commitments to address gender impacts in the mining projects;
- Disclose the final revised draft strategy to the public with a summary of comments received and staff responses before the policy is considered for final Board approval.