

Statement on behalf of Bankwatch to the 17th Working Group of the Parties to the Aarhus Convention at the Thematic Session on promotion of the principles of the Convention in International Forums, 27th February 2014

Changes related to the Aarhus and Espoo Conventions in EBRD Environmental and Social Policy (ESP)

We are very concerned about changes being proposed to the EBRD Environmental and Social Policy 2008. This currently requires the EBRD to act in accordance with principles of international law on access to environmental information and participation in decision-making on issues that may have negative transboundary impacts on the environment (including the UNECE Aarhus and Espoo Conventions) spelled out in the EBRD ESP 2008. These have had a very positive impact on the bank's operations in non-EU countries, especially those in which the aforementioned conventions are yet to be ratified or not properly implemented. However, in the new EBRD ESP draft, reference to these conventions has been moved from the Policy (relevant to the EBRD) to the Performance Requirement 10 on Information Disclosure and Stakeholder Engagement (relevant to the client), which is a significant transfer of responsibility for meeting the commitments from the EBRD to the client. The bank's attempts to encourage clients to be more transparent and to consult with stakeholders are necessary, but hardly likely to be taken seriously when the bank fails to do so itself.

In this spirit, the new draft of the ESP states that the responsibility for impact assessment, preparation of management plans, public consultations, monitoring and implementation of mitigation measures is predominantly the responsibility of the client. This may appear useful in raising the capacity of clients to assess and deal with risks, however, this can only work in a combination with a clearly spelled out commitment on behalf of the EBRD to do more than simply "review" the information provided by the client, which is not the case in the current draft.

There are a number of recent cases that demonstrate the dangers of this approach. For example the Azeri state-owned company SOCAR hiding a coal plant integrated in its refinery project in Turkey or evictions of Roma households to clear the way for a water project in Romania. In both cases consultants hired by the EBRD worked with information provided by the client and failed to identify the 'hidden' problems.

Furthermore, the current categorisation of projects into Category A (greenfield projects with "future" impacts) and category B (brownfield projects) has significant implications on disclosure. In recent years a number of the bank's projects classified as B, projects for which EBRD will not always require a detailed Environmental and Social Impact Assessment, have been associated with serious negative environmental and social impacts and risks. For example Ukrainian nuclear reactors lifetime extension, Kolubara lignite mining in Serbia, Patos-Marinza oil project in Albania, gold mining in Kyrgyzstan and Armenia - are all cases from countries where public access to environmental information has proven to be problematic.

In the above scheme, there is limited space outlined for participation of the public in the due diligence and implementation processes. In this regard, we must stress that high-risk and high-impact projects in the energy and extractives sectors will continue to attract interest from the public and input from stakeholders can improve the quality of due diligence and implementation of mitigation measures. But for this, the public must be given quality information with sufficient notice and the space to participate - the current changes in the policy do not provide for that. Thus we find narrowing of the scope of Aarhus and Espoo conventions application as a step in the wrong direction – instead we would expect the bank to strengthen its requirement on information disclosure and public engagement on category B projects.

Disclosure of environmental and social information and enabling participation in decision-making in the EBRD Public Information Policy (PIP) and in EBRD ESP

The above ESP changes are related to the new draft of the PIP, which included minor improvements on disclosure of information on category A projects. However, in the bank's portfolio in the energy and extractive industry sectors only very few, greenfield projects are given category A and “therefore require a formalised and participatory environmental and social impact assessment process.” The suggestion then is that most of the projects in these high-risk and high-impact sectors do not require a formalised and participatory process.

Considering the public interest that the bank should have registered on category B projects, the addition of a few new provisions for improved disclosure only on category A projects is insufficient and unacceptable. This is all the more so considering that the bank's B category Natural Resource projects in the last few years have repeatedly been subject to derogations from even having to publish a Project Summary Document before board approval, which is unacceptable, especially for such a controversial sector.

Conclusion

Thus we find the narrowing of the scope of application of the Aarhus and Espoo conventions as a step in the wrong direction – instead we would expect the bank to strengthen its requirement on information disclosure and public engagement on category B projects – with clear provisions in both the new ESP and PIP.