CEE Bankwatch Network

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Comments on the EBRD's draft Extractive Mining Industries Strategy (2018-2022)

CEE Bankwatch Network is the largest network of grassroots, environmental and human rights groups in central and eastern Europe. We monitor public finance institutions that are responsible for hundreds of billions of investments across the globe. The banks and funds we watch are often obscure but always important entities that function outside public scrutiny. Together with local communities and other NGOs we work to expose their influence and provide a counterbalance to their unchecked power.

Bankwatch comments to the EBRD's draft Extractive Mining Industries Strategy for the period 2018-2022 (the Strategy) are presented below in five sections focusing on the following areas:

- Sustainability and the Circular Economy,
- Transparency Standards,
- Human Rights,
- Coal Mining and Climate,
- Diversification, Resilience and Integration.

Summary of the draft Strategy (2018-2022)

The draft of the new Extractive Mining Industries Strategy for the period 2018-2022 clarifies the rationale for the EBRD's continued involvement in the sector, reaffirming the importance of mining in fostering transition, namely: '*For resource-rich COOs, the mining sector is a critical contributor to economic activity at local, regional & national levels and it has important downstream value chain linkages in the economy'.*

The rationale for the Bank's involvement in mining is expected to be primarily based on the four transition qualities:

- **Competitive:** company restructuring to help bring operational efficiency and cost-competitiveness.
- **Well-Governed:** promote improvements in the corporate governance and corporate social responsibility of EBRD's clients, promoting compliance with EITI principles at company and country level.
- **Inclusive:** bring inclusive growth by promoting economic participation of women, youth and populations living in underserved areas and introducing high quality training and transparent supply chain management.
- **Green:** control the environmental impact of mining projects and support the adoption of energy and resource efficiency, EHS regulations and other environmental management systems.

I) Extractive sustainability outside the circular economy?

The draft of the new Strategy frames the EBRD's involvement in the mining sector as a driver for sustainability, green growth and inclusiveness. In *Section 2. Mining Sector Context* it claims that '*The mining industry impacts all 17 of the Sustainable Development Goals to varying degrees though the core' mining business, social investments, taxes and investment of public revenues*'.

The EBRD's idea of resource efficiency is within the mining sector – namely efficiency in energy and water use, and better waste management in extractive operations. In contrast, the EU's resource efficiency agenda is tightly linked to the Circular Economy concept and to recycling as a source of raw materials. In Annex 1 on The EU's "Raw Materials Initiative" (RMI) its three pillars are presented:
(i) ensuring a level playing field in access to resources in third countries;
(ii) fostering sustainable supply of raw materials from European sources [in other words, sustainable mining], and
<u>(iii) boosting resource efficiency and promoting recycling.</u>

The draft of the new Strategy presents a limited analysis of the interaction of mining and sustainability in section 2 on *Mining Sector Context Impact of Mining on the Sustainable Development Goals* (SDGs), claiming that '*[t]he mining industry impacts all 17 of the Sustainable Development Goals to varying degrees though the core mining business, social investments, taxes and investment of public revenues*'. Although through reference to the Atlas Mapping Mining to the Sustainable Development Goals[1] the draft recongines the negative impact of mining on SDG15 (Ecosystem and Biodiversity Protection), SDG13 (Climate Action) and SDG6 (Clean Water and Sanitation), it fails to discuss at all measures to mitigate impacts on land.

It is also questionable to what extent efforts to save water and energy in mining can make it really sustainable. An example of mine development causing increased burning of coal is the power supply to the Oyu Tolgoi mine in Mongolia. Currently the mine uses imported coal power from China and the second phase of the project requires the development of internal coal power supply in the South Gobi desert. Bankwatch and its partners in Mongolia and internationally have demanded that Oyu Tolgoi should consider alternatives to coal.[2] Nonetheless, it is clear that energy efficiency in mining does not solve the problem of increased demand for power, which in turn pushes the development of climate damaging facilities. Similarly, even if Oyu Tolgoi uses water saving technology, the mine has severe impact on water resources and creates water conflicts with nomadic herders in the Gobi.

1) Recommendation:

In line with the EU's RMI's pillars and the SDGs he EBRD should introduce in its new Extractive Mining Industry Strategy the ideas of Circular Economy and recycling as a source of critical raw materials. Through its policy dialogue the bank should encourage its COOs to develop strategies that explore various resource efficiency opportunities and should invest in model-setting recycling facilities. Respectively the new Strategy should include relevant language, for example in the following sections:

- In its *Performance Monitoring Framework* (as part of Section 3: *EBRD Approach and Areas of Engagement In Conclusion, What Will the Bank Do?*) the goal should be adjusted to: '<u>*GREEN: Support resource efficiency and the development of circular economy, promote environmentally friendly and resource efficient mining methods.*</u>'
- As a specific objective here should be included '<u>*3.1. Support the development of Circular Economy strategies and recycling facilities through policy dialogue and investments*</u>' with relevant outputs and outcomes.

In addition, looking at the EBRD's Investment Breakdown for the period 1999-2017 (in *Section 1: Reflection on the previous strategy*) it is visible that the Bank has financed primarily gold mining projects (47%) and the most important resources (base metals) for the economy are left far behind as iron ore (3%), zinc (4%) or aluminum (1%). An exception is copper (21%) which usually is associated with the gold deposits and this high share likely comes as a side product of gold extraction. Although a breakdowm from a more recent period is missing to show if this trend is changing, it appears that nearly half of the bank's mining investments have resulted mainly as gold supply for jewelry and safety vaults with very low input to the real useful industrial production.

1 The Atlas can be found here: http://unsdsn.org/resources/publications/mapping-mining-to-the-sustainable-development-goals-an-atlas/

2 Bankwatch report Oyu Tolgoi Phase 2: Plans, Issues and Risks, 2016, can be found here,: https://bankwatch.org/sites/default/files/OyuTolgoi-Phase2.pdf

2) Recommendation:

The new mining strategy should present a breakdown for the last strategy period and a discussion on the focus on gold. An explanation should be provided on why the bank's investments were so addicted to gold production while having such a small, rather insignificant, input to facilitate and ensure the supply of Critical Raw Materials. The Strategy should explain how the bank will overcome this discrepancy in order to become more useful to the productive economic processes for the next strategy period.

II) Is the EBRD lowering the standards on transparency?

In its Mining Operations Policy from 2012 the EBRD committed to the following:

> '*The Bank will continue to adhere to best governance, transparency and revenue management standards by encouraging its clients to implement principles and criteria of the EITI. The Bank will require mining companies to publicly disclose their material project payments to the host government as a minimum revenue transparency obligation, both in countries that apply and do not apply the EITI principles and criteria.*
>
> *[…] as an honest broker […] the Bank will encourage endorsement of EITI where governments have yet to do so.*
>
> *The Bank will require the implementation of the new EU regulations on transparency of extractive industries as soon as they will come into application.*'

The draft of the new Strategy reaffirms the EBRD's commitment to the EITI principles through financing '*projects that promote improvements in the corporate governance and corporate social responsibility of our clients, while trying to bring compliance with EITI principles at company and country level*' as part of its rationale to promote good governance (the Well Governed transition quality). The draft also notes that compliance with EITI principles will be looked at during Country Diagnostics when preparing the bank's Country Strategies.

Compliance with the EITI's criteria, however, is not reaffirmed.

3) Recommendation:

The new Strategy should clearly state that the EBRD is committed to promoting '*<u>compliance with EITI principles and criteria</u>*'.

In addition, the new Strategy draft does not make any reference to EU regulation on transparency of the extractive industries. The EU's Accounting Directive and Transparency Directive include specific rules that require mining companies registered in the EU to report on the taxes, royalties and bonuses that they pay worldwide. In 2016 the European Commission proposed another new directive which requires multinational companies to report annually on their profits and taxes paid in each country where they are active. This reporting is aimed to tackle corporate tax avoidance in Europe, which costs EU countries an estimated Euro 50-70 billion a year, plus it should enable EU citizens to scrutinise the tax behaviour of multinationals. The proposed reporting rules are crucial in ensuring that extractive companies pay taxes where they make their profits.

The EU mandatory disclosure requirement will complement the EITI efforts by legally requiring companies registered or listed in the EU to disclose payments to governments, including in non-EU resource-rich countries, along the same lines as EITI, ultimately strengthening the EITI and extending its scope to all resource-rich countries.

Case study: Dundee Precious Metals, Bulgaria[3]

The EBRD has invested in Chelopech Mining since 2005[4] and holds almost 10 percent equity[5] of the capital of the Canadian umbrella company which channels its profits home through layers of 'paradise' entities.

Dundee Precious Metals Chelopech - the concessionaire of Bulgaria's largest gold mine, is linked to two offshore companies from the Curacao Island: Dundee Precious Curacao GP B.V. and Dundee Precious Curacao LP B.V., as well as to another offshore company registered in Tortola, British Virgin Islands **–** Vatrin Investment Ltd. The three offshore companies, which may be traced in the filings of the Bulgarian Commercial Register, are certainly not the only "paradise" assets of this Canadian investor. In 2003 the Chelopech mine and the gold deposit in Krumovgrad were also bought by an offshore company – Dundee Precious (Barbados).

Yet Dundee Precious Metals Chelopech is part of an even more complex corporate scheme involving the Dutch cooperative company Dundee Precious Metals Cȍoperatief U.A., which holds 100% of the capital of Vatrin Investment. This structure provides options for avoiding the corporate income tax, plus according to the Dutch law, in certain cases cooperatives are not liable for dividend withholding tax. For this tax purpose, a "fiscal unity" with a limited liability company registered in the Netherlands is required. Of course, "Dundee" also own such company: Dundee Precious Chelopech B.V., being in turn owned by another company registered in Denmark, of the family of Dundee Precious Metals.

At least 3 or 4 offshore companies, a Dutch cooperative, several companies registered in the Netherlands, Denmark, UK. Why Dundee Precious Metals – part of the larger Canadian "Dundee Corp." holding, is using such a complex corporate structure?

The most obvious reply is tax. The Chelopech mine is a very profitable enterprise and during the last 6 years it has reported a net profit (after tax) of BGN 740 million combined or nearly USD 450 million as of 20.11.2017. The positive financial result has been duly taxed with the low corporate tax in Bulgaria and this brought to the Bulgarian budget a total revenue of BGN 85 million for the last 6 years. Even the low corporate tax in Bulgaria is a considerable expense, when applied to a company with such a high profit margin. Accordingly, almost **BGN 185 million are the administrative expenses** reported by the company in Chelopech for 2011-2016.

4) Recommendation:

The new Strategy should reaffirm the EBRD's commitment to improving the transparency in the extractive sector, and should ensure that there is no double standards applied to EU and non-EU companies. It should include the sentence:

'*The Bank will require from its clients the implementation of best practice in corporate tax reporting and of the EU regulations on transparency of extractive industries as soon as they will come into application.*'

3 The case study is quoting a comprehensive article in Bulgarian language published on 8 December 2017 in the investigative blog bodil.bg. The full report, commissioned by Za Zemiata, Bankwatch member group in Bulgaria, will be published in December.

4 Project Summary Document: http://www.ebrd.com/work-with-us/projects/psd/chelopech-mining.html

5 Project Summary Document: http://www.ebrd.com/work-with-us/projects/psd/dundee-precious-metals-equity.html

III) Human rights, gender rights and community engagement

The 2012 Mining Operations Policy also included a recognition of the new standards for human rights protection and community engagement, namely:

> '*Business ethics, particularly related to issues of resettlement, indigenous people, and the use of security personnel to protect mining assets have come under scrutiny as mining companies expand their exploration and development activities into regions of the world where the protection of human rights remains a significant challenge. A number of management and performance standards for mining companies to adhere to have emerged. These include the United Nations Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights.*'

The draft of the new Strategy notes among the early messages from consultations the imperative for the EBRD to '*[r]obustly support transparency, human rights & local civil society.*' In its analysis of the current market trend the draft Strategy also acknowledges that communities increasingly expect mining companies to ensure respect of human rights.

However, the draft of the new Strategy lacks a clear recognition of the human rights risks and abuses that mining projects bring to local communities. Specifically it fails to recognise social conflicts, the broken social fabric in many mining communities and the threats and adverse impacts of mining developments on women. Consequently the draft Strategy fails to make specific commitments to promoting the implementation of human rights standards and to ensuring respect of human and gender rights through the Bank's investments in extractive projects. The draft makes no mention of business ethics.

The discussion on the EBRD's mining projects' contribution to the Inclusion quality focuses on employment and supply chain management, so the Inclusion section on Challenges in the Mining Industry focuses on Access to employment and skills and to Benefit Sharing. Whereas the Well Governed section focuses on weak regulation as an obstacle to business, but not as limited ability of state institutions to protect their citizens' rights (such as labour rights, property rights, freedom of speech and participation in decision making etc.).

Annex E of the draft discusses the link between the new Mining Strategy with the bank's Environmental and Social Policy and its Performance Requirements. It claims that '*The practical application of the PRs is on a risk basis. As mining is generally considered "high risk" there is strict application on all mining sector projects*'. This claim falls short of the fact that Natural Resources projects regularly get categorised as category B, even when the project involves resettlement conflicts that go unresolved for decades (for example, Kolubara lignite mine in Serbia[6] and Maritsa East lignite mine in Bulgaria[7]) or imprisonment of anti-mine protesters (as in the Centerra's Kumtor gold project in Kyrgyzstan[8]). The stream of PCM complaints from Kolubara communities and the recent PCM complaint from Maritsa East community are a sign that the ESP does not provide sufficient safeguards for mine impacted communities – in contradiction to the Lessons Learned listed in Section 1: Reflection on the previous strategy.

5) Recommendations:

In Section 1: Reflection on the previous strategy, under Lessons Learned, please include the following lesson on *Effective implementation of environmental health and safety and social practices (EHSS)*:

- *'COO's and their regulatory authorities are ineffective in protecting and upholding their citizens' rights'.*

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6 Project Summary Document for EPS Restructuring (the last of a string of projects since 2001): http://www.ebrd.com/work-with-us/projects/psd/eps-restructuring.html

7 EBRD Procurement Notice: http://www.ebrd.com/work-with-us/procurement/p-pn-150225c.html

8 EBRD PSD: http://www.ebrd.com/work-with-us/projects/psd/centerra-revolving-debt-facility.html

In addition, please list '*PCM Compliance Reviews and Problem Solving Initiatives results*' as a Learning method, and draw valid lessons along the lines:

- '*Examples of successful resettlement, land acquisition and livelihood restoration in mining projects are few and far between*';
- '*State owned companies particularly lack understanding and application of best practice in resettlement, land acquisition and livelihood restoration'.*

Under *Capacity building with clients and governments* and *Move towards international standards*, please include:

- '*TA needed to improve capacity of governments and state-owned companies to implement international standards*'.

6) Recommendation:

In Section 2. Mining Sector Context under Well Governed Challenges in the Mining Industry, please include:

- '*Improved capacity of regulatory authorities will improve the social impact of mining and ensure protection of human, gender and community rights*.'

7) Recommendations:

In Section 3. What will the Bank Do … the aim for the Well Governed quality should be expanded to include human and gender rights, along the lines:

- '*WELL-GOVERNED: Support governance in the mining sector by promoting transparency <u>+ respect for human rights,</u>+ and regulatory reform where necessary'*;

In 2.1 under Well Governed we believe that specific output and outcomes should reflect the bank's commitment to human rights standards and the demonstration in its projects of the successful implementation of requirements and best international standards on public participation in decision-making, and on resettlement, land acquisition and livelihoods restoration. Therefore we suggest the introduction of specific outputs and outcomes to this end, for example:

- *2.1 should be phrased" Improved transparency <u>+ and human rights+</u> standards in mining, including on environmental and social aspects*,
- '*Output: No/volume of investments demonstrating successful implementation of best international standards on public participation*
- *Output: No/volume of investments demonstrating successful implementation of best international standards on resettlement, land acquisition and livelihoods restoration*';
- '*Outcomes: respect for human rights, the rights of communities, land and property owners; transparent and participatory decision-making on mining projects; decreased social tension, resolution of social conflicts and social license to operate for bank's client; improved public reputation of the bank and its client; etc.*'

IV) Support to Coal Mining

The draft Strategy in the part Scope and Structure of the New Strategy answers the questions *What is covered? / What is not covered?* Here the draft clearly states that during the new strategy period till 2020 the EBRD intends to invest in thermal and coking coal mining, namely:

- Financing of coking coal projects;
- Exceptionally, HSE&E improvement projects at thermal coal mining operations;
- Health and safety, & operational safety improvements, or mine remediation in coal mining operations.

The stated support to coal mining in the EBRD's draft Mining Strategy seriously undermines the bank's climate leader credentials and its commitment to support the low-carbon ransition in its COOs through its Green Economy Transition (GET) approach. It also suggests that the coal investments called 'improvements' may end up counted as climate action towards achieving the bank's target of directing 40% of its investments to green projects.

Furthermore, there are no criteria or methodology for deciding on what kind of projects fit into the above categories, and the indicators for progress are only measuring volumes of investment. Bankwatch's experience in monitoring EBRD supported mining projects shows that this allows vertically integrated energy companies to benefit from EBRD's support for coal mining, e.g. the controversial EPS Kolubara Environmental Improvement project from 2011.

The EBRD should not be able to dodge its responsibility for the CO_2 emissions simply by separating mining from combustion, as coal is generally mined in order to burn it. In the example mentioned above, such an approach has made it possible for the bank to support Serbia's state-owned electricity company Elektroprivreda Srbije (EPS) no less than five times since 2001, without being able to steer the company away from its over-reliance on lignite, which still makes up to around 70 percent of annual power generation.

Governments in transition countries with abundant coal reserves are often determined to use them, in spite of all the scientific evidence of coal's contribution to climate change, its environmental and social negative impacts, and the need to put an end to coal combustion globally. If these countries are adamant in sticking to this path, there should be no role for public money to support them in doing so, especially if this support distorts the market non-competitiveness of coal and keeps the sector on life-support.

8) Recommendations:

The EBRD should stop investing in coal mining and its new Extractive Mining Industries Strategy should *'take account of climate change and encourage governments to take a long term strategic approach'.* The Scope and Structure section of the new Strategy should reflect this commitment and clearly state that the bank intends to make '*No investments in coal mining or associated facilities*' in the *What is not covered* section. In the scope of the up-coming Energy Policy revision the bank should start a transparent and participatory discussion about the just transition of its COOs and of coal-dependent regions.

V) Resilience, Integration and the Diversification of COOs dependent on mining exports

The introduction of the *Rationale for the Bank's Involvement in Mining* in the draft states:

> '*Mining also has potential negative impacts when international environmental standards are not respected and economic diversification is not pursued. It is therefore important to develop mining activities in a sustainable manner and improve the resilience and integration of our COOs. This will be achieved through the use of new types of financing currently missing in the market, financial instruments to mitigate against commodity price shocks, and greater trade integration between new export markets and remote mining areas*'.

In the same section a table presents the EBRD's COOs dependence on mining exports. For example, mining is essential part of export in Mongolia-88%, Kyrgyzstan-45%, Armenia-44%, Georgia-28%, Montenegro-26%, Tajikistan-23%. The bank has operated in some of these countries for decades and significant part of its portfolio has been invested in mining. It is worth reflecting to what degree have these investments contributed to this dependence? What are the results for the economy of these countries – is it transition, is it sustainable?

In *Section 2: Mining Sector Context. Challenges in the Mining Industry Through the Six Transition Qualities* there is a mention of '*new types of financial instruments*' that can address vulnerability to price shocks. Futures contracts are the only given example of such measures to mitigate against commodity cycles downturn.

The draft Strategy is confusing in jumping between '*the four transition qualities*' (competitive, well governed, inclusive, green) and the '*six transition qualities*' (competitive, well governed, inclusive, green, plus resilient and integrated). Resilience and Integration receive a superficial treatment, so the ideas around these transition qualities require extra clarity.

The draft Strategy demonstrates EBRD's strong intent to bank on investment opportunities in the exploration and extraction of raw materials from the EBRD's COOs, without giving due consideration to the serious need for economic diversification in these countries and the contradicting interests that drive extraction and diversification.

The economies of the above mentioned countries are highly dependent on export of resources and raw materials, and thus highly vulnerable to commodities price shocks and downturns. This dependence can be seen a direct result of the strategy of the centralized economy chain during the Soviet era primarily sending by-products to industrial facilities concentrated in the Russian and Ukrainian soviet republics, for example. In this sense, even if the Bank applies correctly the its transition principles, the mining projects might become more cost effective, better governed and with less environmental impact but will not contribute significantly to the '*important downstream value chain linkages in the economy*', particularly at national level. These countries will continue to deplete their non-renewable resources, exporting them as supplies to the high technological facilities abroad – type of economy which is expected to collapse after the life cycle of the mining projects.

While the EBRD has invested in the development of some big deposits with life over 50 years (like Oyu Tolgoi in Mongolia), many of its investments are in mines that will be exhausted in 10-15 years, like the Krumovgrad and Amulsar deposits in Bulgaria and Armenia respectively. (Alternatively, the companies conveniently received their mine permits for a smaller area while continuing exploration, and will later be granted permits for larger territories, including degraded protected areas and set-aside areas of sensitive ecosystems and habitats.) Small businesses dependent on short-term mining projects as suppliers or services collapse after the mining development. Therefore these investments will not bring the required revenue and technological development of the EBRD's COOs, in order to become solid sustainable economies with significant added value to the development of the society. So the Bank's rationale to '*foster transition*' is under question.

Finally, the export of raw materials has another 'darker' side related to the export of pollution, which is often considered to be outside the EBRD's project boundaries. In projects such as Chelopech Mining, ore with high arsenic content is considered as a final product from the project. It is exported to the client's smelter in Namibia and little consideration is paid to the negative environmental and health impacts that the company has there[9].

9) Recommendation:

The new Strategy should present a coherent set of Transition Qualities (four or six?) and a more comprehensive analysis of the Resilient and Integrated qualities. The need for economic diversification (only mentioned in the introduction) should be addressed throughout the Strategy, not only through unclear ideas on financial diversification, but for example through a commitment to not exceed a quota of number/volume of mining investments on country level. The case of Mongolia, where the volume of investments in mining significantly questions the bank's strategy to support diversification, is a case in point. Additionally, policy dialogue and technical assistance is required to help COOs to develop Diversification Strategies. Through such actions the EBRD can demonstrate that it is not only a bank, making profit on mining investments, but indeed a responsible financial institution invested in the sustainable development of its countries of operation.

9 Bankwatch has published several articles about the Tsumeb smelter in 2015 (https://bankwatch.org/blog/exporting-toxic-pollution-from-europe-to-namibia), (https://bankwatch.org/blog/health-reports-confirmed-widespread-over-exposure-to-toxic-arsenic-at-tsumeb-smelter-in-namibia), and interactive documentary The Good Life in 2016 (https://vimeo.com/187247879) and 2017 (https://bankwatch.org/blog/namibian-smelter-expansion-risks-deepening-environmental-and-health-problems)