

April 2018

## CEE Bankwatch Network comments on EBRD Environmental and Social Policy,

### Part 1: Experience of ESP implementation from energy and agribusiness projects

The EBRD's 2014 Environmental and Social Policy (the Policy), when properly applied, goes a long way towards preventing harmful and social impacts from bank-financed projects. The further improvements needed are a combination of implementing the current provisions and further tightening those which would not lead to adequate safeguards even if applied. This submission is based on experience with monitoring EBRD projects in the energy and agribusiness sectors, and focuses on the formulation and implementation of the Policy and PR1, PR3, PR6 and PR9.

In our experience with hydropower projects in the Balkans, provisions on **financial intermediaries** need to be tightened up for projects such as small hydropower plants that can have significant individual or cumulative impacts, including both appraisal and information disclosure. The EBRD needs to be involved in these processes as delegation does not appear to be working well by itself.

Our experience shows that **small hydropower plants** are extremely difficult to monitor due to practices like blocking fish passes, releasing too little water, and adjusting the flow. Therefore a precautionary approach is needed and such projects should be completely excluded in critical habitats, priority biodiversity features, protected areas and internationally recognised areas of biodiversity value. A summary of our findings on hydropower plants is included as a matrix in Annex 1.

The Policy should integrate **IUCN Motion no.26**,<sup>1</sup> which among other things calls on governments to prohibit environmentally damaging industrial activities and infrastructure development in all IUCN categories of protected area and urges financial institutions (including development banks) not to conduct, invest in or fund environmentally damaging industrial activities and infrastructure development within, or that negatively impact protected areas or any areas of particular importance for biodiversity and ecosystem services that are identified by governments as essential to achieving the Aichi Biodiversity Targets, and to make public commitments to this effect.

In view of the above, we recommend that **all hydropower plants need to be subject to an environmental impact assessment** process, even ones with a small electrical output, at least unless the host countries harmonise their legislation with the EU's and have a functioning Appropriate Assessment system in place. This means hydropower plant projects should be classified as Category A.

1 IUCN <https://portals.iucn.org/congress/motion/026>

With regards to fossil fuels, due to the Paris Agreement, no more new coal plants or fossil fuel infrastructure can be built if the world is to limit climate change to 1.5-2 degrees Celsius.<sup>2</sup> This means that the EBRD needs to include new **fossil fuel infrastructure** to its exclusion list.

All EBRD investments need to lead to absolute greenhouse gas reductions. Relative reductions of GHG emissions per unit of production are not enough to ensure global overall GHG reductions. And while projects such as distribution network improvements to allow more renewables to be integrated are generally welcome, they must really lead to **absolute emissions reductions across the company's portfolio** in reality, not only potentially. The bank needs to commit to ensuring this is a condition of its projects. This will require EBRD clients to draw up a credible GHG reductions plan in order to be eligible for financing for the bank and would allow the bank's climate action investments to make a more credible contribution to real reductions.

## Specific comments

### Policy

**Section B. para 6.** *"The EBRD will seek within its mandate to ensure through its environmental and social appraisal and monitoring processes that projects are designed, implemented and operated in compliance with applicable regulatory requirements and good international practice (GIP). Central to this approach is the application of the mitigation hierarchy."* and **PR 1. 3.** *"The objectives of this PR are to: "...adopt a mitigation hierarchy approach to address adverse environmental or social impacts and issues to workers, affected communities, and the environment from project activities"*

**Comment:** In many of the EBRD's countries of operations there is lacking capacity and political will to properly carry out environmental monitoring and enforcement as well as socially sensitive procedures like resettlement. Examples of lack of monitoring and enforcement have arisen in southeast Europe with small hydropower projects, either during the construction phase as with [Dabrova Dolina 1](#) and [Vladići](#) or also in the operation phase, eg. blocked fish pass at [Šutanovina](#).

The low likelihood of mitigation measures being effective in such circumstances - and even lower likelihood for compensation measures - means that the primacy of avoiding impacts rather than mitigating them must be further emphasised. While the policy already states that the mitigation hierarchy is a hierarchy, in reality the bank often appears too ready to skip the highest level of the hierarchy and move straight to mitigation measures. For example with small hydropower plants, the electricity output is low and they would not be sorely missed if not built, but there has been an assumption that impacts can be mitigated and the projects should go ahead.

<sup>2</sup> Oil Change International: The Sky's Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production, 22 September 2016, <http://priceofoil.org/2016/09/22/the-skys-limit-report>

**Section B, para 13.** *“The EBRD recognises the importance of addressing both the causes and the consequences of climate change in its countries of operations. The EBRD will engage, whenever appropriate, in innovative investments and technical assistance to support no/low-carbon investments and climate-change mitigation and adaptation opportunities, as well as identify opportunities to reduce emissions in EBRD-supported projects. The EBRD will also support its clients in developing adaptation measures that promote climate-resilient investments.”*

**Comment:** For clients with a high share of fossil fuels in their portfolios, EBRD projects must really lead to absolute emissions reductions, not only on the project level but also across the company’s portfolio, otherwise there is a risk of undermining achievements in one area with emissions increases in another, or increasing efficiency but still increasing emissions with higher production. The bank needs to commit to ensuring that across the board absolute emissions reductions are a condition of its projects. This represents an excellent opportunity for the bank to add climate impact value in its projects.

**Section C, para 28.** *“A project will be categorised as “FI” if the financing structure involves the provision of funds through financial intermediaries (FI) whereby the FI undertakes the task of sub-project appraisal and monitoring” and PR 9, para 2 “The nature of intermediated financing means that the FIs will assume delegated responsibility for environmental and social assessment, risk management and monitoring as well as overall portfolio management. The nature of delegation may take various forms depending on a number of factors, such as the type of finance provided. The effectiveness of the FIs’ environmental and social risk management will be evaluated and monitored on a continuous basis throughout the project life cycle.”*

**Comment:** If the project has the characteristics of a Category A or B project, the EBRD needs to assist with the task of sub-project appraisal and monitoring. It is not clear whether this happens at the moment, as it is not clearly stipulated by the policy, but it needs to.

Financing contracts with FIs also need to include a requirement to publish environmental information and a comprehensive definition of environmental information in line with the Aarhus Convention.

This should go beyond environmental impact assessments and include also eg. investors’ requests to Ministries for decisions on whether environmental impact assessments are needed and the accompanying decisions, as well as any studies carried out and decisions subsequently taken. Such information is unfortunately not always available on government websites.

In a survey of 38 financial intermediaries in southeast Europe undertaken in 2017 by Bankwatch, only 13 responded at all. None of the banks provided information on Category A projects, three stated that they have not financed Category A and/or renewable projects via

EBRD credit lines, and three argued that the information we sought is confidential.<sup>3</sup> This clearly shows that the public's right to access environmental information is being denied even though the projects are financed with public money, and at the same time the commercial bank intermediaries are missing an opportunity to benefit from public input about the risks of particular projects.

**Section C, para 31.** *"It is the responsibility of the client to ensure that adequate information is provided so that the Bank can undertake an environmental and social appraisal in accordance with this Policy. The Bank's role is to: (i) review the clients' information; (ii) provide guidance to assist clients in developing appropriate measures consistent with the mitigation hierarchy to address environmental and social impacts to meet the relevant PRs; and (iii) help identify opportunities for additional environmental or social benefits."*

**Comment:** It is natural that Bank clients would like to present themselves in the best light. In other cases they may not fully understand certain issues, eg. details of environmental legislation. This sometimes leads to omitting information or presenting information in an ambiguous way. The Bank should therefore not only review the clients' information but should also seek input on projects from sources other than the client and take that into account as well. In practice it already does this to some extent - for example by publishing environmental impact assessments for certain projects and by reviewing information submitted to it by third parties. This should be reflected in the Policy to make it clear that the Bank carries out active environmental and social due diligence on projects.

### **Appendix 1: EBRD Environmental and Social Exclusion List**

**Comment:** The Environmental and Social Exclusion List should integrate IUCN Motion no.26,<sup>4</sup> which among other things:

- Calls on governments to prohibit environmentally damaging industrial activities and infrastructure development in all IUCN categories of protected area
- Calls on the business community to respect all categories of protected areas as 'no-go' areas for environmentally damaging industrial activities and infrastructure development, to withdraw from those activities in these areas, and not to conduct future activities in protected areas; and
- Urges companies, public sector bodies, financial institutions (including development banks), relevant certification bodies and relevant industry groups not to conduct, invest in or fund environmentally damaging industrial activities and infrastructure development within, or that negatively impact protected areas or any areas of particular importance for biodiversity and ecosystem services that are identified by governments as essential to achieving the Aichi Biodiversity Targets, and to make public commitments to this effect.

It must also exclude:

<sup>3</sup> <https://bankwatch.org/wp-content/uploads/2017/05/briefing-EBRD-FinancialIntermediaries-05May2017.pdf>

<sup>4</sup> <https://portals.iucn.org/congress/motion/026>

- Hydropower projects in critical habitats, priority biodiversity features, protected areas and internationally recognised areas of biodiversity value, due to the low likelihood of being able to ensure that they are built and operated as planned.
- Further investment in new fossil fuel infrastructure, in order to bring the EBRD's financing into line with the overall goals of the Paris Agreement.<sup>5</sup>

## Appendix 2: Category A Projects

**Comment:** Item 11 should include **all** hydropower projects. Recent cases such as [Dabrova Dolina](#) in Croatia, the cluster of small hydropower plants around [Jošanička Banja](#) in Serbia, [Rapuni 1&2 and Ternove](#) in Albania and [Brajcinska Reka 1&2 and Tresonecka](#) in Macedonia show that even plants with small dams or no dams - and plants that appear to be “mill conversions” - can cause significant impacts, either individually or cumulatively.

## PR 1 Assessment and Management of Environmental and Social Impacts and Issues

**Comment:** For clients with a high share of fossil fuels in their portfolios, EBRD projects must really lead to absolute emissions reductions, not only on the project level but also across the company's portfolio, otherwise there is a risk of undermining achievements in one area with emissions increases in another, or increasing efficiency but still increasing emissions with higher production. This will require EBRD clients to draw up a credible GHG reductions plan in order to be eligible for financing for the bank and would allow the bank's climate action investments to make a more credible contribution to real reductions. The development of such a plan prior to board approval should be stipulated in PR 1 or PR 3.

**PR 1, para 4.** *“This PR applies to all projects directly financed by the EBRD.”*

**Comment:** It should apply also to those which are indirectly financed but which if directly financed would fall into Categories A and B. We understand that financial intermediaries should raise their own capacity to properly assess projects, but in the few cases where we have been able to access information about projects financed through intermediaries, it is clear that this has not been done properly.

**PR 1, para 12.** *“For Category A and B projects which involve existing facilities, an assessment of the environmental and social issues of past and current operations will be required. The purpose of this assessment is to identify potential risks, liabilities and opportunities associated with the existing facilities and operations, to confirm the current status of regulatory compliance and to assess the client's existing management systems and overall performance against the PRs. Any investigations of existing facilities must be carried out by experts that are independent from the facility that is being investigated.”*

<sup>5</sup> Oil Change International: The Sky's Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production, 22 September 2016, <http://priceofoil.org/2016/09/22/the-skys-limit-report>

**Comment:** Unless this baseline information is published somewhere, it is extremely difficult for local people and civil society groups to meaningfully engage in dialogue with the EBRD and its clients about such projects, and for the EBRD to show its value added. We have also added this comment into our input on the PIP.

**PR 1, para 14.** *“In cases where clients with multi-site operations are seeking general corporate finance, working capital or equity financing, the assessment outlined in paragraphs 7 to 12 may not be appropriate. In such cases, the client’s current ESMS and past and current performance will be assessed against the applicable PRs and an ESAP will be developed and implemented at the corporate level (as opposed to site-specific level). The corporate level assessment will:*

- *assess the client’s ability to manage and address all relevant social and environmental impacts and issues associated with its operations and facilities against the requirements described in the PRs*
  - *assess the client’s compliance record with applicable environmental and social regulatory requirements applicable in the jurisdictions in which the project operates*
  - *identify the client’s main stakeholder groups and current stakeholder engagement activities.*
- The exact scope of the corporate assessment will be determined on a case-by-case basis.”*

**Comment:** In the case of the MHP Corporate Support Loan<sup>6</sup>, the EBRD has said it is satisfied that the company’s operations are in compliance with national law. However, this is not the case at present. In February 2016 the EBRD disclosed a Monitoring Assessment Report on MHP, which recommended that the company should improve its stakeholder engagement, develop a formal Land Acquisition Framework, conduct water quality and availability studies. More than two years later, improvements are few and far between. This illustrates that level of scrutiny is not enough.

### **PR 3 Resource Efficiency and Pollution Prevention and Control**

#### **PR 3 Section on Greenhouse gases:**

**Comment:** Due to the need for overall GHG reductions, not only efficiency increases, add something like: *“The Client will draw up a GHG emissions reduction plan for the project period and beyond. Across the company’s portfolio, emissions must show an absolute decrease within the project period, not only a decrease per unit of production”.*

**PR 3, para 15:** *“For projects that currently produce, or are expected to produce post-investment, more than 25,000 tonnes of CO<sub>2</sub>-equivalent annually, the client will quantify these emissions in accordance with EBRD Methodology for Assessment of Greenhouse Gas Emissions. The scope of GHG assessment shall include all direct emissions from the facilities, activities and operations that are part of the project or system, as well as indirect emissions associated with the production of energy used by the project. Quantification of GHG emissions will be conducted by the client annually and reported to the EBRD.”*

6 See PSD: <http://www.ebrd.com/work-with-us/projects/psd/mhp-corporate-support-loan.html>

**Comments:** The EBRD's greenhouse gas emissions accounting methodology needs to be changed to take account of Scope 3 emissions and to ensure the baseline scenario is the most environmentally and socially acceptable one. In some cases the EBRD has included Scope 3 emissions in its GHG assessment, for example in the case of the Southern Gas Corridor, but in most cases its protocol does not require it to do so. This gives the impression that the calculations include Scope 3 emissions when it suits the bank and do not when it does not and undermines the good work that the bank is doing in some areas to reduce emissions by calling its claims in this field. Similarly the baseline to be used is quite unclear in the EBRD's protocol and needs to be more consistent. Methane's global warming potential also needs to be calculated over a lifespan that corresponds to its residence time in the atmosphere of approximately 12 years, not over 100 years.<sup>7</sup>

## **PR 6 Biodiversity Conservation and Sustainable Management of Living Natural Resources**

**General comment:** The EBRD should start considering 'agricultural biodiversity' in its agribusiness projects and should require that its clients include impact on agricultural biodiversity in the scope of ESIA's. FAO and the Secretariat of the Convention on Biological Diversity (CBD) define it as follows: "*Agricultural biodiversity refers to the variety and variability of animals, plants, and micro-organisms on earth that are important to food and agriculture which result from the interaction between the environment, genetic resources and the management systems and practices used by people. [...] It comprises the diversity of genetic resources (varieties, breeds, etc.) and species used directly or indirectly for food and agriculture (including, in the FAO definition, crops, livestock, forestry and fisheries) for the production of food, fodder, fiber, fuel and pharmaceuticals, the diversity of species that support production (soil biota, pollinators, predators, etc.) and those in the wider environment that support agro-ecosystems (agricultural, pastoral, forest and aquatic), as well as the diversity of the agro-ecosystems themselves.*"<sup>8</sup>

Groups working on the right to food and nutrition<sup>9</sup> point out that agricultural biodiversity is under severe threat as the industrial plant and animal breeding systems reward homogeneity, thus putting on risk and affecting those variables that underpin the systems of biodiversity. The EBRD should ensure that its agribusiness investments will not threaten agricultural biodiversity and thus endanger food security of communities and nations in the bank's countries of operation.

### **PR 6, para 5. Objectives**

*"adopt the mitigation hierarchy approach, with the aim of achieving no net loss of biodiversity, and where appropriate, a net gain of biodiversity"*

<sup>7</sup> [https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5\\_Chapter08\\_FINAL.pdf](https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf)

<sup>8</sup> International Technical Workshop organised jointly by the Food and Agriculture Organisation of the United Nations and the Secretariat of the Convention on Biological Diversity (SCBD), with the support of the Government of the Netherlands 2-4 December 1998, FAO Headquarters, Rome, Italy. Available at <http://www.fao.org/docrep/x2775e/X2775E03.htm>

<sup>9</sup> [http://www.fian.be/IMG/pdf/droits\\_semences\\_uk\\_web.pdf](http://www.fian.be/IMG/pdf/droits_semences_uk_web.pdf)

**Comment:** Our comments above on the difficulties of ensuring that mitigation measures are really implemented in countries with serious environmental governance issues are also valid here. This also applies, to an even greater extent, to the issue of biodiversity offsetting - see for example the case of Mongolia<sup>10</sup> - which is indirectly referred to here in the phrase “no net loss.” The EBRD needs to concentrate on helping countries get the basics of environmental governance right before even considering complicated issues such as biodiversity offsetting, whose effectiveness is open to question even in countries with much greater monitoring and enforcement capacity. Therefore this objective should simply refer to “no loss of biodiversity, and where possible, a gain of biodiversity.”

**PR 6, General requirements: Assessment of issues and impacts**

*“Where further investigations are needed to provide greater certainty of the significance of potential impacts, the client should carry out additional studies and/or monitoring before undertaking project-related activities that could cause irreversible impacts.”*

**Comment:** Such studies need to be carried out before Board approval of the project, not only before project activities are carried out. Otherwise the bank gives the impression that the loan is a done deal and the studies may appear to the developer to be a mere formality. We have seen such issues arising previously in the Ombla and Boškov Most cases. While some additional plans may have to be drawn up after project approval on certain issues, biodiversity impacts cannot be one of these issues, as they are a make-or-break issue for whether a project may go ahead or not.

**PR 6, paras 11-18, Biodiversity conservation requirements** - priority biodiversity features and critical habitats

**Comments:** Current practices are not sufficiently picking up the existence of features that would define specific habitats as critical habitats or priority biodiversity features. We have seen this for example in the cases of Boškov Most, Tresonecka, and the Brajčino 1 and 2 plants in Macedonia. National legislation sometimes requires lower-level studies but the public participation and quality control are even more problematic in these cases than with full environmental impact assessments, so we believe that full EIAs are needed for all hydropower plants, with the exception of those in EU countries that may need only an Appropriate Assessment.

Where it is already known that a certain location is a critical habitat or priority biodiversity feature, or this is picked up during the EIA process, the current ESP lays out provisions which would in theory prevent most projects being constructed in such areas. However in practice this is not happening, as in the cases of Tresonecka hydropower plant and the Brajčino plants. It is not clear whether the problem arose in identifying the sites as critical habitat or whether the sites' status was not properly taken into account when going ahead with the plan to construct. If the former, carrying out full EIAs should help to prevent this situation, and where critical

<sup>10</sup> <https://bankwatch.org/wp-content/uploads/2015/10/briefing-biodiversity-offsetting-MNG-25May2015.pdf>

habitats/ priority biodiversity features are identified, projects should not go ahead. If the latter, the current critical habitat provisions are not clear enough to prevent projects going ahead that do not fulfil the exception criteria.

Another issue is monitoring. We have most experience with this in the small hydropower sector, and in reality these projects can only be monitored to a limited extent as practices like blocking fish passes to hold back more water in the pond, or letting too little water flow downstream would need to be monitored constantly in order to be effective.

**We therefore consider that hydropower projects should be excluded from being built in critical habitats or priority diversity features, with no exceptions. For other projects it is likely also most time and resource-efficient to include projects in critical habitats or priority biodiversity features in the EBRD's exclusion list rather than considering for each separate project whether they can fulfil the requirements laid out in paragraphs 13 and 16.** We believe the small loss from not implementing certain projects in these areas would be greatly outweighed by the gain of improving biodiversity protection and sending a message to governments and investors that some locations simply should not be building sites. In particular for the hydropower sector, it is highly unlikely that any project can truly comply with the conditions and the back-and-forth with investors and civil society groups is not an effective use of anyone's time for a project that is ultimately not likely to go ahead.

#### **PR 6, paras 19-20 Legally protected and internationally recognised areas of biodiversity value**

**Comments:** For the areas which contain critical habitat or priority biodiversity features, the stronger criteria above apply, but for those which do not, the level of protection afforded by this section is very low. It mainly depends on national-level protection requirements and hangs on the government in question putting protected areas above the interests of investors. This is not often the case in many of the EBRD's countries of operation.

We have seen in practice that governments are willing to change zoning of protected areas to weaken protection in areas where infrastructure is planned, and that they do not have sufficient monitoring and enforcement regimes to make sure that any mitigation measures are actually carried out and implemented. This is particularly applicable to hydropower as we have seen above, where monitoring would have to be done constantly to be effective.

We therefore call on the EBRD to strengthen the clauses related to protected areas and internationally recognised areas of biodiversity value. **We consider that hydropower projects should be excluded from being built in protected areas and internationally recognised areas of biodiversity value, with no exceptions. For other projects we also consider it most time and resource-efficient to include projects in protected areas and internationally recognised areas of biodiversity value in the EBRD's exclusion list rather than considering for each project whether governments are truly complying with their**

**own legislation**, as the small loss of not carrying out such projects is more than outweighed by the gain of better protecting biodiverse areas.

#### **PR 6, para 26. Sustainable management of living natural resources - Assessment of issues and impacts**

*“Clients with projects involving the use of living natural resources will assess the sustainability of the resource, as well as taking into account the potential impacts on ecosystems and the biodiversity they support and the following principles:*

- the use of any living natural resource needs to be considered in the context of the core ecological functions it provides within the ecosystem*
- consideration of direct, indirect and cumulative impacts*
- the use of the living natural resource will follow the mitigation hierarchy approach and seek to optimise benefits for other users*
- production and/or use of species or populations that are not natural to the location and not tested for their invasiveness and/or dominance over local species should be restricted or be subject to adequate studies and approval by the relevant national competent authorities, prior to production or use. “*

**Comment:** In the case of [MHP](#) project, the EBRD's client controls all aspects of the poultry production chain, as at the regional Vinnytsya poultry Farm: from growing crops to production of fodder; incubating and hatching eggs; raising and slaughtering chickens; and processing, distributing and selling their meat. In this project a comprehensive ESIA should have been developed, consisting of a cumulative impact assessment, for pollution impacts assessment jointly from the Vinnytsya poultry farm (12 rearing areas, and 12 planned/under construction), Zernoproduct (grain growing company), all secondary facilities supporting its operations, and those of other nearby constructions (water treatment facilities and a recent expansion with a [biogas plant](#) approved by the EBRD) and the existing enterprises in the area.

**Comment:** The [MHP's](#) vertically integrated model of business requires the growing of crops for chicken feed production. Thus, the company leases the lands from the local farmers and individual landowners and introduces the crop cultures needed for the fodder. An assessment of the introduction of monocultures should be carried out in such cases.

#### **PR 9 Financial Intermediaries**

##### **General comment:**

As noted above, in 2017 Bankwatch carried out research with 38 of the EBRD's financial intermediaries in southeast Europe regarding access to information and environmental and social appraisal. Only 13 responses were received, and no information about Category A projects was disclosed by the banks.<sup>11</sup> Considering that public money is at stake, this inadequate situation needs to be improved, both in terms of access to information and in terms of environmental and social appraisal.

<sup>11</sup> <https://bankwatch.org/wp-content/uploads/2017/05/briefing-EBRD-FinancialIntermediaries-05May2017.pdf>

**PR 9, para 13.** *“The environmental and social procedures must include risk assessment and monitoring mechanisms, as appropriate, to:*

*..... • monitor subprojects to ensure compliance with national laws on environment, health and safety and labour”*

**Comment:** Our experience shows that national level environmental monitoring and enforcement is not functional in many of the countries the EBRD operates in. Regular monitoring does not take place, and specific requests to inspectorates result either in no site visits being undertaken or in site visits taking place but the reports thereof completely bypassing the most important issues raised by the complainants. Informal communication by our partners with inspectorates suggests that they are often under political pressure not to rock the boat with particular investors.

This therefore raises the question of how much the financial intermediaries can be expected to achieve with their monitoring practices. While it is certainly desirable to build their capacity, leaving the majority of monitoring to them is not likely to result in high quality monitoring and enforcement in practice. Therefore we believe the EBRD needs also to participate in monitoring activities for FI projects.

**PR 9, para 14: Stakeholder engagement**

*“The FI will put in place a system for dealing with external communication on environmental and social matters, for example, by establishing a point of contact for dealing with public enquiries, including concerns related to environmental and social matters. The FI will respond to such enquiries and concerns in a timely manner.”*

**Comment:** In our survey, only 6 of 38 intermediaries were able to point us to a specific person or e-mail address designated to deal with environmental and social issues, and three even argued that this information is confidential. This suggests financial intermediaries are suffering from a major transparency issue. We have included in our comments on the PIP a recommendation for the EBRD to publish the names of contact persons in the intermediaries for environmental and social issues but implementation of this provision also needs to be improved by the FIs themselves. If such a simple financing condition is not being implemented, it raises questions about more complicated social and environmental appraisal.

**PR 9, para 14** *“The FIs are also encouraged to publish their corporate environmental and social policy or a summary of their ESMS on their web site, if available. Where possible, FIs will list on their web site the link to any Environmental and Social Impact Assessment (ESIA) reports for Category A subprojects which they finance.”*

**Comment:** This language is too loose to have any impact in reality. This allows FIs to choose not to publish the information, which can jeopardise the EBRD’s intention to have harmonised standards both for direct investments and intermediated ones. Given that the EBRD delegates the task of sub-project appraisal and monitoring to FIs, this obvious

loophole means that very likely there is no way for external stakeholders to evaluate if the project appraisal process was done properly. At the same time narrowing down potential access only to Category A projects and ESIA's excludes a myriad of other environmental data that could be relevant for interested parties: screening decisions, impact assessments for small projects, environmental permits, scoping documents and so on. This is particularly relevant for small hydropower plants which are often not required to undergo an environmental impact assessment under national legislation.

## PR 10: Information Disclosure and Stakeholder Engagement

**General comments:** 1) This PR is generally adequate as it stands on paper, but because of the classification of some quite significant projects as Category B rather than Category A, these often end up becoming controversial. We therefore propose, as mentioned above, to make sure that projects like hydropower plants, that often cause controversy with local communities and damage to biodiversity, are always categorised as A.

2) It is also important to underline that major changes to projects may also require more stakeholder engagement than was originally planned. For example, the Dabrova dolina hydropower plant in Croatia was subject to an Appropriate Assessment project which did not attract much interest as the project looked relatively controversial. However when the project design changed, the Croatian authorities took a decision that no new Appropriate Assessment was needed. Yet the changes in the project design made quite a difference to its environmental impact, and a new assessment really needed to be carried out.

3) For hydropower projects, the EBRD's hydropower Guidance Note contains the following: *"Environmental parameters (flow, level, temperature, water quality) monitored at the hydropower scheme level should be disclosed publicly through a dedicated project web page and made available locally, particularly in areas where internet use is not widespread."* This needs to be included in the Environmental and Social Policy PR 10 as a requirement, not just in the non-binding Guidance Note on hydropower.

### Annex 1 - issues with hydropower projects in southeast Europe – poor implementation or policy loopholes?

What went wrong	Examples of plants exhibiting this issue	Would EBRD policy prevent this if implemented properly? Why? Why not?	Recommendations for the Environmental and Social Policy revision
No environmental impact assessment carried out	Rapuni 1-2 – alleged Summary Report of Environmental Impact Assessment, not available	Unclear – it is in a protected area and potentially critical habitat but was categorised B. If a proper baseline assessment had been done this might have been picked up.	All hydropower plants need EIAs (or AAs in EU countries) as lower-level baseline studies do not seem to be picking up all the relevant information and national legislation does not seem to be requiring EIAs in all cases.

	Ternove	It takes water from the protected Black Lake but still no EIA was done.	
Poor quality environmental assessment carried out/impact on protected area or critical habitat not properly assessed	Rapuni 1-2, Ternove, Brajčino 2 – impacts on Prespa trout and other species played down  Tresonečka (Elaborat) – no sign of field research being done	Rapuni and Ternove categorised B (see below).  For Brajčino and Tresonečka, hard to tell exactly what happened because classification of projects unclear. Only an Elaborat was required, not a full EIA. For Brajčino 2 there was a Stakeholder Engagement Plan but for many small projects there are no public consultation requirements. For Prespa trout and Balkan lynx, critical habitat should have been identified. Given that there are clear project alternatives, this should have stopped the projects, but without an adequate baseline assessment, obviously didn't.	EIAs (or at least AAs in EU countries) needed for all plants and public consultation needed.  Better protection needed for hydropower in protected areas, as those without critical habitats or priority biodiversity features are currently only required to comply with national legislation, which is weak and often adjusted for the needs of specific projects.  Hydropower development needs to be excluded in protected areas
Categorisation issues	Rapuni 1-2 and Ternove categorised B > no EIA	EBRD ESP not clear enough on this issue, it is open to interpretation. We would argue that in most cases the impacts of hydropower plants “cannot readily be identified or assessed” at the time of categorisation due to the poor level of knowledge about the baseline situation but it is not clear whether any of the small ones are being classified as Category A at all.	All hydropower plants should be Category A, needing EIA/AA and public consultation and public consultation, no B category hydro.
No public consultation or possible consultation but no-one knew about it	Rapuni 1-2, Ternove, Tresonečka, Brajčino 1	Categorisation problem. If it had been A, there would have been a clearer consultation requirement.	EIA and public consultation needed for all plants, no B category hydropower.
Change of project design after EIA/AA/project appraisal carried out that led to changes in impacts	Dabrova dolina  Rapuni 1-2	Monitoring issue – FI required to monitor but with unclear impact.  Monitoring issue - EBRD identified a tunnel being built to connect Rapuni 1-2 with Rapuni 3-4, not in the original project. The change exacerbated negative impacts downstream	EBRD to be included in monitoring FI projects  Exclude projects in sensitive areas due to the problem of whether much can be done once the damage is inflicted.

Public was/is not aware of project and could not raise concerns on time	Rapuni 1-2, Ternove  Dabrova dolina – not aware that it would be new-build  Brajčino 1 & 2 Tresonečka	Categorisation problem for Rapuni and Ternove, unclear for Dabrova dolina and Brajčino what category they were. But if A then problem should have been resolved to some extent.  For Dabrova dolina, more complicated, new AA process should have been carried out but wasn't <b>and</b> monitoring/enforcement very weak.  For Tresonečka public consultation was not required for the environmental "elaborat."	Categorise as A  EBRD needed to be involved in project appraisal, major changes to project should have been examined in EIA process, should have been Category A if it wasn't. Exclude projects in sensitive areas due to the problem of whether much can be done once the damage is inflicted.
Too small ecologically acceptable flow defined in documentation	Rapuni 1-2? Brajčino 1 and 2, Tresonečka	For projects done through financial intermediaries, if they are not categorised as A, then they only have to follow national level legislation, which leads to too small flows.  Even for directly financed projects, relying on national legislation can lead to unclarity whether the minimal flow was defined at all (Rapuni 1-2)	Categorise all hydro as A.
Too small ecologically acceptable flow in reality	Rapuni 1-2 Brajčino 1 Tresonečka Dabrova dolina Kraljuščica	See monitoring, below.	Exclude projects in sensitive areas due to the problem of whether much can be done once the damage is inflicted.  Require environmental flow to be displayed constantly on the internet (while ensuring that sensors are suitably placed).
Fish pass design	Rapuni 1-2, Brajčino 1, Brajčino 2, Vladići, Šutanovina, Velež	It is rather unclear so far whether the design was flawed or the construction and therefore at which stage it could have been prevented. If it was in the design, this should have been caught in the environmental impact assessment process, but it is often not required. If it is in the construction, then again it is a matter of monitoring.	Categorise all hydropower as A  Exclude projects in sensitive areas due to the problem of whether much can be done once the damage is inflicted.
Fish pass is blocked	Brajčino 1, possibly sometimes Brajčino 2, Šutanovina	See monitoring, below.	Exclude projects in sensitive areas due to the problem of whether much can be done once the damage is inflicted.
Public does not have access to environmental documentation and other permits	Rapuni 1-2 Ternove Brajčino 1	Problem in categorisation - B or FI (unclear for Brajčino)	Categorise all hydropower projects as A.
Cumulative impact	Rapuni 1-2	For Category B projects, not covered	Include all hydropower projects as

not assessed	Brajčino 1 and 2 Velež, Šutanovina, Marići, Vladići	adequately.	Category A.
Lack of monitoring on habitat impacts or issues denied by inspectorate	Dabrova dolina,	PR.13 is clear that the FI has to do monitoring. The question is what happens if there are problematic findings – can the FI actually do much?	EBRD needs to be involved in monitoring AND exclude projects in sensitive areas due to the problem of whether much can be done once the damage is inflicted.
Once issues picked up, unclear what is being done about it	Rapuni, Ternove	Category B projects under facilities, no PSD, no ESAPs, grievance mechanisms not established (the latter should be done under EBRD policy).	Category B project ESAPs need to be published and/or classify hydropower projects as A automatically..  PSDs for all projects including sub-projects.