

April 2018

CEE Bankwatch Network comments on EBRD Public Information Policy 2014

Introduction

The 2014 Public Information Policy brought with it some innovations in terms of information disclosure such as including the names of sub-projects under direct financing facility Project Summary Documents, but our experience in recent years shows that improvements are still needed to ensure that the public has access to information about projects financed and potentially financed by the EBRD.

This is crucial for people to realise their right to environmental information as enshrined in the Aarhus Convention and for the EBRD's accountability as a public institution. However it is also a means for the bank and its clients to enhance their performance, mitigate risks, and increase the effectiveness of their investments.

Our comments are structured in two sections: General comments on overall improvements that need to be made in the Public Information Policy, and specific comments on the relevant sections and paragraphs of the policy.

In particular we would point to investments through financial intermediaries and direct financing facilities as areas where better disclosure is needed.

Category B projects also require more disclosure of environmental information: Sometimes it is a matter of categorisation and we believe that the project impacts are serious enough to be categorised as A. However for those projects which do fall into Category B, there is still a need to release environmental documents, as there is no confidentiality issue, and access to information on agreed measures is crucial for people to understand what the project is achieving and for informed participation in decision-making.

General Comments

- We welcome recent decisions by the EBRD to publish ex-post information about hydropower projects financed through intermediaries in the Western Balkans. Nevertheless, it is crucial for information to be systematically published in advance about planned intermediary projects that may have environmental and social impacts in order to allow the public to come forward with issues that may be relevant for assessing the risks of the project.
- Disclosure of environmental information on Category B projects should follow the spirit and principles of the Aarhus Convention and the EBRD should disclose relevant project documentation proactively or at least upon request, as it is not commercially sensitive

and is crucial for informed participation in democratic decision-making, even if project impacts are considered not to be severe.

- Project information through financing facilities such as the Direct Financing Facility is getting better but still provides little information about what the project actually is. Therefore more information about sub-projects is needed - at least a short description of the project - and updates need to be included in the EBRD's e-mail notification system on updates to the website.
- GHG assessments of projects need to be disclosed before board approval. These clearly fall into the category of environmental information, so in the spirit of the Aarhus Convention they should be disclosed. In addition, for some projects these are a crucial part of the justification for the project and without them, informed discussion with the bank is very difficult.
- The list of signed EBRD projects at: <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395236434965&d=Mobile&pagename=EBRD%2FContent%2FContentLayout> is highly useful. It would be even better to have it updated more often than once a year and also to include cancelled projects so that it is clear what happened to projects whose PSDs disappeared from the website.
- The EBRD's Environmental and Social Policy PR 9 transfers much of the environmental and social appraisal of financial intermediary sub-projects to personnel within the intermediary and requires the intermediary to appoint staff for this purpose. However in 2017 Bankwatch undertook research on 38 EBRD financial intermediaries in southeast Europe on implementation of the Environmental and Social Policy and noted that it was not always easy to find the right contact person within the intermediary banks. Only 13 out of 38 banks responded at all, and only six pointed us to a contact person or dedicated e-mail address for social and environmental matters.¹ Therefore the EBRD needs to ensure that information about contact people for environmental and social issues within intermediaries is published and kept up to date, preferably within Project Summary Documents.

Specific Comments:

Section C. Basic Principles, para 2: Accountability and governance. *“The EBRD is committed to reinforcing its accountability to shareholders, and to ensuring high standards of corporate governance.”*

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Comment: Accountability to shareholders is crucial, however the bank also needs to be accountable to those affected by its operations. Many of its practices already recognise this so it would be logical and fair also to add it here.

The Public Information Policy lacks a human rights perspective and fails to acknowledge and protect adequately the right to know of individuals and communities affected by the EBRD's investments, as well as the the public's right to know how public institutions like the EBRD make investment decisions and implement its mandates to promote transition to market economy, democracy and the protection of human rights, environmental and social sustainability.

Section C, para 2: Safeguarding the business approach to implementing the mandate. *“A business-sensitive partnership with clients and contractual counterparties is necessary to allay concerns about client confidentiality which could affect their willingness to work with the Bank.”*

Comment: We agree that the EBRD's business clients must understand what to expect in terms of information disclosure and confidentiality. However it is also a privilege to receive financing from a public institution like the EBRD. It not only allows financing for projects which would otherwise not be available, but also implies a kind of “stamp of approval” by the Bank. EBRD financing therefore must and already does entail specific responsibilities in terms of environmental and social compliance as well as information disclosure. However in some cases such as financial intermediary operations and projects categorised with environmental and social category B, there is an imbalance in favour of business confidentiality compared to disclosure. Ultimately this does not help anyone as timely public disclosure can also help the bank to avoid involvement in problematic projects or to require timely improvements in project design where necessary.

In cases of co-financing project information can be disclosed by other investors, showing that EBRD's clients willingness to receive project finance does not diminish with increased transparency standards. For example in the case of agribusiness projects in Ukraine, sister institutions like the IFC and EIB, as well as Dutch ECA Atradius, disclosed considerably more information on projects, both proactively and upon request.

Section D, para 2.1.1: Draft Country Strategies. *“The Bank will invite the public to provide input to the preparation of Country Strategies on the basis of a draft Country Strategy document. Whenever appropriate, the Bank will proactively engage with civil society representatives and members of the public at an early stage of Country Strategy development through consultation workshops as well as other means. The draft Country Strategy will be publicly released and posted on the Bank's website, following a process which includes consultation with the authorities of the country concerned. The draft Country Strategy will be posted for a period of 45 calendar days, during which time the public is invited to send comments to the Bank. A summary of public comments received will be made available to the Board of Directors in a Report on the Invitation to Comment before final approval by the Board of the Country Strategy.”*

And **para 2.1.3:** Final Country Strategies: *“After the Country Strategy has been approved, the Report on the Invitation to Comment, containing the summary of public comments received and staff responses will be publicly released on the Bank’s website. While all comments received by the Bank during this exercise will be considered, and the senders acknowledged, the Bank will not normally respond to individual public comments or communications received.”*

Comment: There is a selective approach to dealing with Country Strategy development. For instance, the Country Strategy for Ukraine expired in 2014 and since then the EBRD has been using a Reform Anchoring & Crisis Response Package reviewed at the end of 2015 *“in light of the political and economic situation on the ground as well as of the results of its existing operations in terms of delivery efficiency and outcomes.”* It should be noted that neither of the two packages - the one prepared for 2014-2015 two-year period, nor the one since 2016 - have been consulted with the public, as the Public Info Policy requires for Country Strategies.

Section D, 2.2: Sector Strategies and Policies

Comment: This section does not reflect the existing practice of inviting public comments on the current strategies/policies before drafting the new ones. We suggest reflecting this existing practice in the policy.

For strategies/policies where there is a relatively high level of public interest we also suggest including a round of commenting on the second draft of the strategy/policy so that it is clear what changes have been taken on board and where additional dialogue is still needed.

Section D, 2.3: Governance Policies subject to public review

Comment: This section does not reflect the existing practice of inviting public comments on the current policies before drafting the new ones. We suggest reflecting this existing practice in the policy.

For policies where there is a relatively high level of public interest we also suggest including a round of commenting on the second draft of the policy.

Section D, para 3.1.1: *“A Project Summary Document (PSD) will be prepared for each private and public sector project where approval is sought from the Board of Directors. PSDs provide a factual summary of the main elements of a given project and potential investment which includes the following information: (i) the identity of the project company; (ii) total project cost (where applicable); (iii) the project location; (iv) a brief description of the project and its objective; (v) the amount and nature of EBRD’s investment; (vi) the target date for a decision on the project by the Board of Directors; (vii) the anticipated transition impact, and for public sector projects, expected transition impact rating; (viii) a summary of environmental and social impacts associated with the project and agreed mitigation measures; (ix) if applicable, details of project related technical co-operation funding and grant financing; and (x) guidance on how and where*

information about the project can be obtained, including contact points for the project sponsor and the EBRD Operation Leader.”

Comments: The section on expected transition impacts in project summary documents needs to be improved. Many of the project justifications look like they’ve been quickly thought up and are not properly justified. For example, the EBRD long ago recognised that eg. “increasing private sector involvement” is not an inherent good in itself if the necessary governance structures are not functioning, yet PSDs continue to include such phrases without further explanation. Other examples are “introduction of a new financing instrument” or “increased competition in the sector”, which are meaningless unless these can be shown to have positive economic and social impacts.

The PSD is often the only source of information the public has about how companies are progressing with environmental and social improvements after the initial assessment. Therefore this section of the Project Summary Documents needs to be more comprehensive and more regularly updated about what has been agreed and what has been implemented. This also applies to projects financed through facilities such as the Western Balkans Sustainable Energy Direct Finance Facility like Rapuni 1 and 2 and Ternove hydros. For projects where environmental issues have been identified after the initial assessment, the EBRD should consider publicising more than a summary - namely monitoring reports and ESAPs redacted to exclude commercially-sensitive data should be published as well.

In recent years we have observed that the name of the EBRD Operation Leader is absent from the project summary documents. However we do think this provision should be adhered to. This is to ensure that the bank staff are fully included in discussions about environmental/social concerns with the projects and that these are mainstreamed in the bank’s operations. In addition, not all issues we would like to draw the bank’s attention to with regard to projects are related to environmental and social standards, so it is necessary to provide a contact who is not solely concentrating on these issues but is at the same time not the project sponsor.

Section D, para 3.1.2 *“For projects where approval is not sought from the Board of Directors, but under delegated approval, a PSD will be prepared if there are significant environmental or social issues. For “Category A” projects approved under a Framework Project, either a separate PSD will be prepared, or the Framework PSD will be updated, to include summary information on the sub-project’s significant environmental or social issues and agreed mitigation measures. For projects that are financed by special funds, relevant information will be posted on the fund web pages on the EBRD website.”*

Comments: This should also be applied to financial intermediary investments and Category B projects. Separate PSDs are much more useful than updates to facility pages because the notification system on the website informs subscribed readers that they have been posted.

Project information through financing facilities such as the Direct Financing Facility is getting better but still provides little information about what the project actually is. This is noticeable from a sample of signed Natural Resources projects from 2015-2016 from the EBRD’s xls sheet

of signed projects. A particularly mysterious example is a project in Bulgaria entitled “LEF: Horse” for which we have been able to find no further information at all. There are also other examples such as LEF: Winstar and DFF: Maya Project for which no description of the projects is available in PSDs.

Also there are no notifications when the information on sub-projects is updated and one does not see it by opening the webpage with the list of PSDs, so it is very unlikely that anyone will notice it is there unless having heard from another source that the EBRD has financed it. Therefore more information about sub-projects is needed - at least a short description of the project, and updates need to be included in the EBRD’s e-mail notification system on updates to the website.

Section D, para 3.1.9: *“PSDs will be updated, if material changes as approved by the Board, are made to the project following the release of the original PSD. For “Category A” projects, the environmental sections of the PSDs will be reviewed annually and updated as appropriate.”*

Comment: This does not appear to be done very consistently. We believe it would benefit both the civil society organisations and members of the public interested in the projects and the bank and companies participating, as it would be clearer what progress is being made. This should also be done for Category B projects given that many of the projects attracting attention from the public and civil society organisations have fallen into this category.

Section D, 3.2 Public Sector Projects *“Board Reports for public sector projects will be made available to the public on request, once the project has been approved by the Board of Directors. Information considered confidential, as set out in Section E of the Policy, will be removed from the documents prior to release.”*

Comments: Private sector board reports should also be made available on request. Information which is confidential can be redacted the same as in public sector projects.

When disclosing redacted reports, it should be indicated what kind of information has been removed.

Section D, 3.4: Environmental and social information relating to projects

Comment: Some information is not covered in this section which in our opinion needs to be. For example, in the Environmental and Social Policy, PR 1. 12 states that *“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....”*

In our experience, 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.

As far as we are aware, the EBRD currently has no obligation to publish the actual GHG reductions from its projects, only the expected ones. This needs to be changed in order to better understand the bank's real contribution to GHG reductions and the remaining issues that need to be addressed.

Similarly, as we have proposed in our comments on the Environmental and Social Policy, EBRD clients with a high share of fossil fuels in their portfolio need to draw up a plan to reduce their portfolio-wide emissions in order to be eligible for EBRD financing. This is to avoid situations where the bank provides specific or corporate-wide loans to companies whose emissions do not fall as a result, either because the project is climate-beneficial but the rest of the company's emissions rise, or because the financing is at the corporate-level and it is not clear what it will actually be used for, as in the cases of Elektroprivreda Srbije restructuring loan and the Bulgarian Energy Holding bonds issue. Such plans or at least the action points from them and timelines need to be publicly available.

Section D, para 3.4.1 *"For "Category A" projects, in addition to the disclosure required of the clients under the Environmental and Social Policy, the Bank will make available Environmental and Social Impact Assessments on "Category A" on the EBRD website in its Headquarters in London and in the relevant EBRD Resident Office a minimum of 60 calendar days prior to consideration of the project by the Board of Directors for private sector projects and 120 calendar days prior to Board consideration for public sector projects."*

So far it has not been standard practice to state clearly when the 60 and 120 day period starts and ends on the EBRD's website for each ESIA and this is causing confusion among people who are not aware of this general rule. The disclosure is seen as a kind of public consultation but with no deadline people are confused about when, how and why to submit comments. It should be clearly stated when the period begins and ends when each ESIA is disclosed.

We recommend also that the consultation period for both public and private category A projects is 120 days. For example ADB's Public Communications Policy (2009) is as follows: *"Information Disclosure 17. The borrower/client will submit to ADB the following documents for disclosure on ADB's website: (i) a draft full EIA (including the draft EMP) at least 120 days prior to ADB Board consideration, and/or environmental assessment and review frameworks before project appraisal, where applicable; (ii) the final EIA/IEE; (iii) a new or updated EIA/IEE and corrective action plan prepared during project implementation, if any; and (iv) the environmental monitoring reports. For environment category A projects involving facilities and/or business activities that already exist or are under construction, the borrower/client will submit the audit report to ADB to disclose on DB's website at least 120 days prior to ADB Board approval."*

The EBRD could follow the ADB's policy requiring 120 day public disclosure of draft environmental and social assessments *"where the subprojects financed by the financial intermediaries ... through either credit-line, other loans, equity, guarantee, or other financing instruments, have potential for significant environmental or social impacts."* (ADB Safeguard

Policy Statement (2009), Safeguard Requirements 4: Special Requirement for different finance modalities).

In the case of the recently approved Nenskra hydropower project the EBRD and the client disclosed up-dated Environmental and Social Studies only in English. Project affected people were not able to review these updated studies, to ascertain if their concerns and demands had been properly addressed prior to board approval of the project.

Therefore it is important to disclose information with a clear idea of whose rights to information and participation in decision-making need to be respected, and whether the language of the information and the timeframe for consultation before Board approval take into account the needs and feedback of rights-holders.

Section D para 3.4.1 “[...] *Relevant documents for Category A Projects that are directly financed by the EBRD are found on the Environmental and Social Impact Assessment webpages. Relevant documents for Category A projects that are financed under special funds will be found on the relevant fund web pages.*”

Comment: It is not very practical to have the documents for Category A projects on special fund web pages, because they in general don't have notification mechanisms for informing subscribers about updates, unlike the EBRD website. Additionally, we have never noticed any such documents being uploaded on such websites – it is not clear whether this is because projects have not been categorised as A or whether the fund administrators were not aware of the requirement.

Section D para “3.4.2 *The Project Summary Document will summarise i) the rationale for categorisation of a project; ii) a description of the main environmental and social issues associated with the project; iii) key measures agreed to mitigate the risks and impacts; iv) where greater than 25,000t CO2 equivalent/year, the expected GHG emissions of the project; v) a summary of any disclosure or consultation activities, and vi) a link to the ESIA page for Category A projects.*”

Comment: The disclosure of a figure for GHG emissions or emissions reductions means very little without providing the assessment made to arrive at this figure. The GHG assessment should be provided along with the PSD before the Board date.

Section D para 4.3.5 Public Information Policy: annual report on implementation. *“The Secretary General will report to the Board on implementation of the Policy on an annual (calendar year) basis and such reports, in English and Russian, will be publicly released on the Bank’s website.”*

This is very useful in understanding the different aspects of implementation. In 2016 we note that the report did not contain an overview of the number of requests refused and the number of requests answered late. This would be very useful and should be reinstated in future editions.

Section E Information considered confidential

Para 1.8 “[...] Likewise, the Bank does not disclose legal documentation, including all contractual documentation relating to a project, operation or technical assistance project, or correspondence pertaining to Bank-financed projects (whether financed by donors in whole or in part), including documents or information relating to negotiations between the Bank and its clients, donors, co-financiers and other contractual counter-parties relating to a project.”

Para “3. In exceptional circumstances, the Bank reserves the right to disclose confidential information protected by the confidentiality criteria set out above...if the Bank’s management determines that the disclosure of certain confidential information would be likely to avert...imminent and significant adverse impacts on the environment.”

Comment: We do not see any reason why redacted financing contracts containing environmental information would not be released even if there is no “imminent” adverse impact but there is a genuine right of the public to access environmental information, in accordance with the Aarhus convention. This second provision gives too much discretionary power to the management to evaluate what are the “imminent and significant adverse impacts” without mentioning the right to access environmental information and without proper justification why information should be withheld.

Annex 1, Section 2 “(vi) Decision: The Bank will normally respond within 20 working days after receiving the request or clarification or, if a timely explanation for a further delay is provided (within 10 working days following receipt), no later than 40 working days. The Bank’s response shall either provide the requested information or a denial of the request in whole or in part. In the case of a denial, the reasons for the decision will be given. An appeal against this can be made as set out below.”

Comment: We believe the 40 days provision is used too often and often without timely and adequate justification. The policy should be adjusted to make clear that 20 days is the rule and that 40 days is justified only in cases where the request is exceptionally complex. If necessary, staff capacity should be increased to enable timely responses. In addition we believe that fewer information requests would be necessary if more information was disclosed systematically, for example by updating project summary documents, disclosing information about category A and B financial intermediary projects.

Annex: Sample of natural resources projects signed 2015 and 2016 and availability of PSDs

Country	Sector	Operation Name	Op Status	Original Signing Date	EBRD Finance	PSD?
ARMENIA	Natural Resources	Lydian (Amulsar Gold Mine) - Extension	Active	04 Aug 2016	7,821,030	Yes

AZERBAIJAN	Natural Resources	Lukoil Shah Deniz Stage II	Active	07 Aug 2015	236,731,215	Yes
BULGARIA	Natural Resources	Dundee Precious Metals Equity	Active	22 Dec 2016	34,089,295	Late
BULGARIA	Natural Resources	LEF: Horse	Active	01 Jul 2015	10,000,000	Complete mystery
EGYPT	Natural Resources	Merlon Petroleum	Active	30 Oct 2015	29,670,312	Yes
EGYPT	Natural Resources	PICO Oil and Gas	Active	22 Jun 2015	47,346,243	Yes
EGYPT	Natural Resources	Sonker Bunkering Company	Active	04 Jan 2016	88,783,675	Yes
FYR MACEDONIA	Natural Resources	LEF Euromax convertible debt	Active	29 Apr 2016	4,734,624	Mentioned in DFF list but no PSD
GREECE	Natural Resources	Energiean II	Active	05 Jul 2016	18,938,497	Yes
GREECE	Natural Resources	Energiean Oil	Active	19 May 2016	71,019,365	Yes
KAZAKHSTAN	Natural Resources	Bozoi Gas Storage Facility	Active	26 May 2016	262,241,303	Yes
KAZAKHSTAN	Natural Resources	Koktaszhal Mine Development	Active	30 Mar 2015	94,692,486	Yes
KAZAKHSTAN	Natural Resources	Koktaszhal Mine Development - equity	Active	28 May 2015	191	No
KAZAKHSTAN	Natural Resources	Voskhod Chromium	Active	23 Feb 2015	115,998,296	Yes
KYRGYZ REPUBLIC	Natural Resources	Centerra Global	Active	12 Feb 2016	71,019,365	Yes
KYRGYZ REPUBLIC	Natural Resources	MCFF - KICB Standard Oil	Complete	20 May 2015	1,373,041	No
MOLDOVA	Natural Resources	Ungeni Chisinau Natural Gas Pipeline	Active	19 Dec 2016	41,000,000	Yes
MONGOLIA	Natural Resources	Centerra Global	Active	12 Feb 2016	71,019,365	Yes
MONGOLIA	Natural Resources	Oyu Tolgoi Mine Development	Active	15 Dec 2015	378,769,945	Yes

MOROCCO	Natural Resources	CMT HSE Loan	Active	23 Dec 2016	28,000,000	Yes
MOROCCO	Natural Resources	DFF: Maya Project	Active	22 Sep 2015	5,681,549	No, Maya is mentioned under DFF in 2018 only and for a different amount
ROMANIA	Natural Resources	LEF: Winstar	Complete	20 Feb 2015	10,681,312	No
TURKEY	Natural Resources	Balpet Gasoline Stations	Active	04 Apr 2016	3,640,000	Yes
TURKEY	Natural Resources	Centerra Turkey	Active	10 Aug 2016	71,019,365	Yes
TURKEY	Natural Resources	TUPRAS Resource Efficiency Loan	Active	01 Aug 2016	142,038,729	Yes
UKRAINE	Natural Resources	Naftogaz Gas Purchase Facility	Active	23 Oct 2015	284,077,458	Yes

Source:

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395236434965&d=Mobile&pagename=EBRD%2FContent%2FContentLayout>
and EBRD Project Summaries

Dundee Bulgaria PSD late: Target Board date 14.12.2016, PSD published 23.12.2016

<http://www.ebrd.com/work-with-us/projects/psd/dundee-precious-metals-equity.html>

Kazakh Zinc pre-privatisation loan missing from signed projects even though in PSDs as "signed":

<http://www.ebrd.com/work-with-us/projects/psd/shalkiya-zinc-preprivatisation-loan.html>

LEF Euromax mentioned here: <http://www.ebrd.com/work-with-us/projects/psd/direct-finance-framework.html>

Kuwait Energy Loan for which there is still a PSD online was cancelled:

<http://www.ebrd.com/work-with-us/projects/psd/kuwait-energy-loan.html>