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Comments on the EBRD's draft Country Strategy for Uzbekistan

General concerns

During his recent visit to Uzbekistan the EBRD President, Sir Suma Chakrabarti, commended the political and economic reforms and the opening of Uzbekistan to the international community. He also expressed hope that the role of civil society in the country will grow.

In the same spirit, the draft of the new Uzbekistan Country Strategy of the EBRD praises the "*significant progress*" since the release of the Development Strategy for 2017-2021, in which the Uzbek government outlined an ambitious set of political, administrative, economic, social and judicial reforms. The draft strategy also expresses hope that "*further steps in strengthening democratic institutions, in expanding the space in which civil society can operate, in allowing greater media freedom and in promoting women's participation are anticipated*".

Regrettably, the draft Country Strategy lacks a more detailed reflection on the role of civil society and media freedom in political and economic reforms. It is laconic about the financial and reputational risks associated with weak governance, lack of transparent and democratic decision-making processes, which essentially jeopardise the sustainability of EBRD investments. As a result, the draft Country Strategy fails to propose meaningful measures to ensure civil society participation, freedom of media and expression, be it through project finance, policy dialogue or technical cooperation.

Although the Political Assessment conducted by the EBRD openly discusses the challenges to Uzbekistan's transition to democracy, the draft Country Strategy presents no vision on how progress on political reforms will be tracked or supported by the bank. The optimism of Uzbekistan's international partners needs to be cautioned, as the country remains deeply authoritarian, decision-making continues to be highly centralised and reforms still need to gain wider buy-in by institutional apparatus on national, regional and local level.

Meanwhile as reforms aim to guarantee protection of the rights and freedoms of citizens¹, the EBRD has an important role to play in demonstrating through its work how investments can be made in transparent and accountable manner, how civil society and project impacted people can be empowered to meaningfully participate in development projects.

We call on the EBRD to outline in the Uzbekistan Country Strategy a new strategic approach or a comprehensive plan for supporting Uzbekistan's ambitious reform path

1 The Tashkent Times, 8 Febr. 2018, Uzbekistan's Development Strategy for 2017-2021 has been adopted following public consultation, URL <http://tashkenttimes.uz/national/541-uzbekistan-s-development-strategy-for-2017-2021-has-been-adopted-following-> see 2.2. Providing guarantees of protection of rights and freedoms of citizens.

in the areas of **Good governance and protection of rights and freedoms of citizens**. The EBRD should clearly prioritise actions – through transparent investment, technical cooperation and policy dialogue - and come up with strong indicators for progress in these areas.

EBRD's track record in Uzbekistan 2017-2018

Upon the recent visit of President Chakrabarti to Tashkent, Uzbek media announced that, since its renewed engagement in Uzbekistan in 2017, the EBRD has invested over USD 190 million in projects supporting entrepreneurship in the country and the Bank plans to approve projects worth additional \$600 million by the end of 2018.

The minimal transparency of these investments is a reason for serious concern. To date the EBRD has supported several projects in the financial sector, while the new batch of projects awaiting approval in September is in the public municipal sector. In spite of significant risks with regards to institutional and corporate governance in Uzbekistan, and in unison with the EBRD's own obsolete disclosure policies, nearly a billion dollars of the Bank's resources is invested in the country in two years without effectively enabling civil society and impacted people to participate in either investment decision making or project implementation.

The EBRD initially announced that it will focus on the private sector and the first round of investments was indeed directed to financial intermediaries, two agribusiness and one manufacturing projects. By far the biggest investment to date is the USD 100 million senior loan to the National Bank of Uzbekistan. The NBU is 100 per cent owned by the Government of Uzbekistan, however, the EBRD considers this to be a private sector project. Accordingly, the bank has afforded NBU the confidentiality protection of a private sector client and has provided close to no information about the anticipated social impacts of this investment or about the conditions the bank's client has agreed to, for example with regards to possible cotton industry exposure, labour and human rights safeguards in sub-projects.

In 2017 the EBRD invested in two agribusiness projects in Uzbekistan. The impacts of these projects are considered by the bank to be site-specific, readily identifiable, well understood and readily addressed through standard mitigation measures. Nonetheless, the bank has not disclosed any detailed information about its appraisal or measures taken by its client to inform farmers, suppliers and workers, and to incorporate their opinions and needs in project design and management. It is unclear how the bank and its clients will safeguard workers and suppliers' rights, for example with regards to potential forced and child labour, occupational health and safety. Civil society monitoring of the agricultural sector², including a Bankwatch fact-finding mission in the Samarkand region in July, shows that local farmers have very little independence in their business, as local authorities interfere and control every aspect from selection of crops to marketing of the production.

In September 2018, the EBRD Board of Directors is expected to look into several projects for improvement of the municipal services, such as district heating, water supply and wastewater infrastructure. The bank has disclosed extremely limited information about the design or possible impacts of these projects, which does not

2 See article from 20 June 2018, *Uzbek Farmer: "I will definitely be bankrupt this year"*, <http://uzbekgermanforum.org/uzbek-farmer-i-will-definitely-be-bankrupt-this-year/>

meaningfully enable feedback from civil society and impacted people during the consultation period.

Although the anticipated energy and resource efficiency gains resulting from EBRD's MEI projects are welcome, there is no information about the potential negative impacts that construction or tariff changes could have on local businesses or vulnerable groups. The World Bank discloses a number of documents for such projects³, which identify impacts and mitigation measures on resettlement, including of vulnerable groups or people without legal title to land and property. Without similar information on EBRD financed projects, public consultation on its projects can be neither informed, not meaningful.

The experience with the EBRD's investments in 2017-2018 shows that the bank's own governance and transparency policies are weak and a business-as-usual approach to project appraisal and consultation cannot guarantee Uzbek citizens' rights to information, freedom of expression and public participation and access to redress and justice.

In view of this experience, within the scope of the Uzbekistan Country Strategy, the EBRD needs to propose a lot stronger actions and indicators that can guarantee **transparency, accountability and safeguards for the rights of Uzbek people**. As the Bank is reviewing in parallel its Good Governance policies, it needs to meanwhile implement best practices in disclosure of project information and stakeholder engagement on its project in Uzbekistan, following as a minimum the example of its partner institutions like the World Bank and the Green Climate Fund.

Political Assessment in the Context of Article 1

The draft Uzbekistan Country Strategy begins with noting that the country "*is committed to and applying, albeit unevenly, the principles set out in Article 1 of the Agreement Establishing the Bank*". It goes on to praise the "*significant progress*" of reforms, acknowledging governance gaps, the need to expand space for civil society and allowing greater media freedom.

The assessment mentions reforms driven by presidential decrees and new laws, however, the fact remains that most, if not all, are undermined by serious weaknesses in terms of the rule of law. The lack of progress in creating an independent judiciary is especially telling: the Supreme Judicial Council is said to be independent, even though, as the assessment itself states, the members of the newly established Supreme Judicial Council are appointed by the President himself.

On the issue of forced labour in the cotton industry, the political assessment does not reflect (1) how forced labour is an issue in other sectors as well, nor (2) how the issues in cotton resulting in forced labour (quotas on what to harvest and where, as well as price-setting by the authorities) exist elsewhere in agriculture.

The draft Country Strategy and its Political Assessment do not reflect serious shortcomings in laws, for example the new law continues to require NGOs to inform

³ See for example the disclosure on the World Bank's District Heating Energy Efficiency project: <http://projects.worldbank.org/P146206?lang=en>

the authorities about when and where they will be holding meetings, although permission from the authorities will no longer be required.

The Political Assessment correctly states that Uzbekistan started reforms from a very low baseline. However, the emphasis on the progress of reforms and the overall positive language creates a sense of inflated optimism about the situation in the country. The assessment is missing a clear acknowledgement that Uzbekistan remains a deeply authoritarian state and fails to convey the feeling of uncertainty and urgency of necessary action on political reforms. Moreover, there is no translation of the deficiency of reforms described in the Political Assessment into the draft Country Strategy itself. It is not clear what will the Bank do to address insufficient level of political and personal freedoms and lack of justice, which may influence the bank's ability to operate in the country.

In July and early August a number of protests took place in Uzbekistan, which were severely suppressed by law enforcement agencies. The center of protest actions is Tashkent, as people from all regions of Uzbekistan come to voice their grievances to the General Prosecutor's Office, the President's Office or his residence, the Supreme Court of the country. Independent media and monitors reported⁴ that in many cases, protesters were subjected to beatings and administrative arrests.

In its optimism the draft Uzbekistan Country Strategy does not reflect the concerns that long-term plans for political reform are unclear to the majority of Uzbek people. Both Uzbek and international civil society are yet unsure if President Mirziyoyev's reforms are aimed at transforming the political system into functioning democracy or just at easing the state's authoritarian grip?

Power structure

Serious challenges remain in all reform areas despite the stated commitment of Uzbek government to the rule of law, good governance and development in the social sphere. True systemic improvements are still sorely lacking. There is little sign of true decentralisation of power or of the creation of an independent judiciary: in both areas we have seen presidential decrees that introduced new or changed structures that have had little impact on the real situation. Restructuring of the agricultural sector is an example where existing state management structure creates problems out of good intention. In a move to have more fruits and vegetables exported instead of cotton, authorities introduced new requirements and quotas in the sector, thus creating tough control, rather than free market, in an area which was less controlled before.

It is questionable whether a highly centralised reform revolving around one person, Uzbekistan's President, can deliver true democratisation. While legislation assumes rule of law and equal opportunities, the informal hierarchy of power is strong in Uzbekistan. It is difficult to expect changes happening just on the ground of Presidential decrees. Local authorities for a long time enjoyed very wide powers and continue to feel obliged to have full control of the local situation. It is very different

4 Centre-1, 15 August 2018, *Сурат Икромов: «В РУз ухудшение с правами человека – диалог закончился?»*, URL: <https://centre1.com/uzbekistan/surat-ikromov-v-ruz-uhudshenie-s-pravami-cheloveka-dialog-zakonchilsya/>

from the idea of open market that EBRD is building its plans on. For example, farmers in the regions, while formally being independent businesses, are required to spend time at the regular (sometimes daily) meetings with Khakims to be told how to run their businesses.

There is unclear progress on decentralisation reforms and empowering local governance, as the conviction that stability is conditional on strong centralised power and top-down decision-making is widespread. Transfer of power from the top to society and participation or influence of civil society on decisions is still inconceivable. Reforms throughout the country are moving at a much slower speed than in Tashkent and liberalisation of the top-down political system faces massive challenges at the local level. Institutions there need significant changes and capacity building, in order to overcome the non-transparent and authoritarian decision-making habits. In this regard, the EBRD has the opportunity to demonstrate how transparent and accountable investments can be made when engaging with municipal service providers at local level.

Absence of independent monitoring

International institutions rely on civil society in getting to understand the situation across the country. Uzbekistan was systematically destroying its civil society, and it will take time for it to reappear. It is important that the state makes it easy to create and register civil society organisations, so they can operate freely. EBRD should emphasise this requirement to the Uzbek officials, and should be ready to downscale investments in the absence of progress.

Freedom of expression and media

For the EBRD to be able to properly work in Uzbekistan, it needs to ensure robust and transparent monitoring of its investment projects and use its leverage to further push for reforms - making its level of activities in the country with how Uzbekistan meets its obligations, especially as they relate to Article 1.

A lot of changes can be desired with regards to freedom of expression and media, although taboo topics like institutional corruption and forced labour are increasingly covered by local media and a growing number of bloggers. However, media is still controlled by the state, state censorship and self-censorship by journalists continue, thus mainstream media is afraid to tackle many controversial social problems. Independent news outlets are blocked occasionally, while international media faces a number of limitations in receiving accreditation and gaining access to the country.

In this context, criticism of projects and investments is not welcome, as it is still widely viewed as an attack on government and on the authorities. The EBRD could demonstrate **good practice in stakeholder engagement and consultation with people impacted by its projects**, to demonstrate how constructive public feedback can help shape projects and further reforms.

EBRD's Calibrated Approach

The EBRD has seemingly abandoned its calibrated strategic approach although until recently the bank was of the view that the use of political and economic benchmarks has been a useful tool for measuring progress towards multiparty democracy,

pluralism and market economics for the countries under the calibrated approach. The gist of the calibrated strategic approach was precisely in measuring progress against the benchmarks with the view of adjusting the Bank's operational response accordingly: where progress against the benchmarks was noted, the Bank would broaden its engagement; conversely, if regress was noted, the Bank would narrow its engagement.

The EBRD should clarify how it intends to track progress on the reforms towards democratisation of Uzbekistan, and how it will adjust its investment if reforms will stall or reverse. As several CSOs stressed during the first round of consultations for the preparation of the Uzbekistan Country Strategy, EBRD renewed engagement in the country only makes sense if it comes with a clear and elaborate effort to support political reforms and a pronounced intention to use its leverage to further push the government in line with Article 1 mandate to promote transition in countries committed to democracy and respect for human rights.

The renewed engagement of the EBRD in Uzbekistan presents an opportunity for the bank to make clear its expectations on real and lasting improvements in the areas of basic human rights, democratisation, political pluralism, the rule of law, transparency and accountability. Public statements from the highest level of the bank in support of civil society are indeed very welcome, as is diplomacy "behind closed doors", still the bank should propose clear benchmarks, or at least Good Governance indicators, to track that progress of reforms in Uzbekistan. At the same time the EBRD should put its money where its mouth is and ensure its investments will be transparent and will help increase the space for participation and free expression on development projects and programmes.

EBRD's priorities for Uzbekistan for 2018-2023

EBRD has defined for itself a set of Transition qualities, that it wants to be met in the countries of operation. The draft Country Strategy prioritises *competitiveness, green economy* and *integration*, but it lacks sufficient reflection and measures to address the gaps in institutional *governance*. We welcome the Green Economy priority chosen by the strategy, in particular regulatory support for renewables and energy efficiency.

Good governance, including both institutional and corporate governance, is one of the strategic transition qualities that the EBRD should promote. In this regard the draft Country Strategy indicates that the bank "*will also remain alert to bankable opportunities to strengthen governance and promote gender inclusive growth across regions at a project level*". This commitment is too weak and evasive, especially in view of the fact that the both the Uzbek government and civil society have identified good governance as a priority (section 3.1 and 3.3. in the draft CS).

In looking at what the bank can do, in the area of privatisation, the first priority should be to address risks of cronyism and favouritism. This is equally important for the work of financial intermediaries. In agriculture, for example, would farmers be required to get the recommendation of the local farmers' council in order to obtain a loan?

For investments that will have a direct impact on people on the ground (e.g. municipal services, transportation or uranium remediation), proper stakeholder engagement is

key, as pressure mounts on local authorities to secure investments in their region, there is a high risk with the weakness of rule of law and the strong top-down decision-making, that the authorities put pressure on any local stakeholder they see as potentially getting in the way of an investment.

Uzbekistan ranks on 157th place out of 180 countries in Transparency International's 2017 Corruption Perception Index. It goes without saying that transparent investment of public money and accountable institutions are prerequisites for sustainable economic liberalisation and the country's transition to more competitive, green and integrated market economy. It is therefore incomprehensible how "*bankable opportunities to strengthen governance*" can help bridge the massive governance gap?

In view of the above, we recommend to the EBRD to outline in the draft Uzbekistan Country Strategy a new strategic approach or a comprehensive plan for supporting Uzbekistan's ambitious reform path in the areas of **Good governance and protection of rights and freedoms of citizens**.

Financial intermediaries and project monitoring

EBRD promises to have transition impacts through the loans to private sector. Financing sub-projects through financial intermediaries means that the EBRD expectation on the environmental and social impacts are sometimes not properly assessed and monitored. The EBRD is limited in its capacities to follow up and monitor progress even from the business clients that get direct loans from the bank. We acknowledge EBRD plans to improve its situation by hiring Profile Bankers, yet this is unlikely to solve, unfortunately, problems with the financial intermediaries.

Promotion of the PPP concept

The push for the PPP is premature. In an absence of good governance by Uzbekistan authorities on different levels it is difficult to expect that private-public initiative will be done in the best public interest. It is a particularly questionable approach with the EBRD not prioritising Good Governance in its draft Country Strategy. History of authorities acting not in the interest of communities that they lead, as well as widespread of business interests of local politicians and politically exposed persons, makes PPPs very vulnerable to misuse.

EBRD's policy dialogue should focus first on tackling of corruption and top-down decision-making that distorts competition in the market. PPP discussions should be put on hold until governance issues have been addressed, as poor governance presents a high risk for corruption in PPPs.

Focus on credit lines of private and state banks

We learned that previous attempts of the state to provide support to businesses (farmers in particular) created a situation in which local authorities, together with semi-independent organisations like Farmers Union, were pushing farmers to apply for loans, even when farmers were not interested to get credit.

Cronyism is widespread in Uzbekistan. On SME-tailored financial products, the risk for

cronyism in providing loans around work with financial intermediaries, especially state-owned banks, should be monitored and, as necessary, mitigated. While we understand that the EBRD would take measures to ensure that financial risks in SME loans are minimised, it should additionally monitor for and, as required, look to mitigate negative impacts and manage risks and threats to human rights.

Working with SMEs, the risks around cronyism and corruption need to be front and center in EBRD operations: independent monitoring will be needed of the decision-making used in loan assessments.

Agribusiness sector

The same risks need to be monitored for agribusiness with particular attention to the issue of freedom of choice for farmers on how they use their lands or how and at what price they sell their produce.

In working with business councils, the problems with Farmers' Council are a cautionary tale: the independence of any associations or council that the EBRD engages with will need to be assessed, as will the nature of their informal interactions with local, regional and national authorities or banks to assess whether these associations are associations that the entrepreneur would be required to join and would act as tools for control of its members and cronyism (as is often the case with the Farmers' Council) or if they are indeed independent associations operating to benefit the group they represent.

Hydropower projects

It will be too risky for new build Hydro power plants project. It is hard to expect that proper public consultations and proper assessment can be done in the regions of Uzbekistan. In view of the governance gaps and the absence of proper consultation and lack of private property rights, new hydro will likely lead to loss of property and livelihood without proper compensation. There are significant risks of forced displacement or loss of livelihoods.

ICT investments

In supporting ICT, the EBRD should lay out conditions that both guarantee privacy and ensure freedoms for ICT communications (i.e. no spying on opposition figures or blocking key websites). ICT projects need to ensure transparent procurement and sustainability of the supply chain.

Implementation risks (page 16)

Monitoring of the progress on objectives set in the strategy will require extra effort from the Bank. EBRD lacks capacity to follow up with clients on achieving improvements envisaged at the project appraisal stage. It is particularly important to ensure adequate implementation of actions to bring good international Environment and Social practices in the operation of the EBRD clients.

Various organisations in Uzbekistan stress the critical role that CSOs play in bringing information from the ground. Thus EBRD should also focus its effort in the policy dialog on the creation of favourable conditions to register CSOs and expand the space for civil society to operate.