

5 March 2019

To:

Environmental and Social Policy: ESPReview2019@ebrd.com

Project Complaint Mechanism: PCMReview2019@ebrd.com

Public Information Policy: PIPReview2019@ebrd.com

## **CSO letter on the revision of the Good Governance policies related to Financial Intermediaries (FIs)**

Dear Sir/Madam,

We, the undersigned CSOs, welcome this opportunity to submit comments on the EBRD's revision of its Environmental and Social Policy, Access to Information Policy and Project Accountability Policy relating to financial intermediary lending. As we have documented and discussed with the bank and its shareholders on many occasions, this form of lending through third parties carries high risks of environmental and social harms due to its 'hands-off' nature.

Though there have been several improvements in the revised policies, we continue to have significant concerns that the proposed policies are not strong enough to prevent harm and ensure accountability to affected communities.

Relying on intermediaries to carry out due diligence represents a risk which can undermine the quality and positive outcomes of lending operations. In response to this challenge, in the 2019 draft proposal of the Environmental and Social Policy (ESP) the EBRD has re-introduced the "FI referral list" of high risk projects that should be subject to additional checks by the EBRD itself. This is a step in the right direction, but the undersigned CSOs believe more can and must be done to ensure good quality projects.

To this end **we urge the EBRD to:**

- **Disclose disaggregated data subproject information.** The EBRD needs to update Performance Requirement (PR) 9 so that it is clear that the Financial Intermediary is obliged to disclose timely environmental and social information for high risk projects, including those which would be classed as Categories A and B if directly financed, and all projects falling under the FI referral list.
- **Apply EU and EBRD standards, not only national legislation, to high risk (Category A and B) FI sub-projects,** in line with the EBRD's commitment to the European Principles for the Environment. For example, until Appropriate Assessment systems are set up in the countries of operation, environmental impact assessments need to be undertaken for high risk projects such as all hydropower projects.
- **Take part in monitoring, not only due diligence, of both project compliance with standards and of risk categorisation.** The EBRD should monitor the compliance of projects from the Financial Intermediaries Referral List with national legislation, the Environmental and Social Policy and the PRs.

- **Subject FI projects to oversight by the Independent Project Accountability Mechanism - IPAM.** The Exclusions section of the Project Accountability Policy (PAP) should be revised to clarify that the exclusion related to *third parties* applies only to complaints that relate *solely* to actions of third parties, but that issues under the EBRD or a client's (including an FI's) control or influence may be subject to complaints.

## **Transparency of investments**

In addition to the current requirement for the FI to disclose environmental impact assessments for FI sub-projects that are equivalent to Category A, extending information disclosure requirements to Category B sub-projects and sub-projects on the FI Referral List is also a logical step since these projects are already defined by the EBRD as potentially risky. Such disclosure must happen prior to the financing decision and appropriate to the type and level of environmental and social information available. The policy and contracts need to stipulate that disclosure should include the name, sector and location of FI high risk projects as well as “environmental information” as defined by the Aarhus Convention, which would include 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.

**For instance, the World Bank requires much greater disclosure than the EBRD – including of sub-projects supported through commercial banks.** Under the disclosure clause of the World Bank’s 2013 Operational Procedure BP 4.03, the World Bank requires its financial intermediary clients to disclose and permit, in writing, the World Bank to disclose the summary of the Environmental and Social Impact Assessment (ESIA) of any sub-project considered high risk (Category FI-1 and FI-2). An [Oxfam study cites](#) the examples of the World Bank’s investments in Turkish banks, TKB and TSKB, for which the bank disclosed 208 documents relating to the investments and their sub projects. **The EBRD should not lag behind its development finance counterparts.**

## **EU and EBRD standards must be systematically applied to high risk projects, not only national legislation**

In the ESP draft, PR 9 point 13 only includes a requirement for sub-projects to comply with national legislation. In practice, many projects do not require an environmental impact assessment at the national level in non-EU countries, and this means local people often know nothing of the projects until the diggers come. The EBRD needs to ensure that the same standards apply to FI investments in all countries of operation, in line with its commitments under the European Principles for the Environment. Therefore, point 13 should include compliance with EU legislation and relevant EBRD performance requirements, not only national legislation, unless national legislation is stricter. In practice, however, non-EU countries generally do not have equivalents to the Nature and Habitats Directives, which would require Appropriate Assessments in some cases instead of Environmental Impact Assessments (EIAs). This is particularly sensitive in sectors with high environmental and social impacts, for example the hydropower sector. Therefore, to ensure that an appropriate level of impact assessment takes place, all hydropower projects need to be subject to EIAs until such time as the countries

set up functional Appropriate Assessment systems.

Although it is welcome that the revised policy requires application of the PR to Category A projects (“Where an FI is financing sub-projects that meet the criteria in the indicative list of Category A projects included as Appendix 2 to the EBRD Environmental and Social Policy, such sub-projects will be required to meet PRs 1 to 8 and 10”) this limitation only to Category A could serve as a perverse incentive for FI clients to mis-categorise sub-projects as Category B. Therefore, this requirement should apply to all high risk projects, Categories A and B, as well as to sub-projects on the referral list.

### **Maintain adequate monitoring**


The new draft of the ESP explicitly deletes point 4.17 of the 2014 Policy, which committed the EBRD to carry out monitoring of its operations “including both direct investment and FI projects”. This creates a dangerous precedent in particular because for some of the projects, such as [small hydropower plants](#), problems may appear only in the later stages of the project cycle. This point should be reintroduced in the final draft of the policy.

### **IPAM’s oversight**

The current draft of the Project Accountability Policy contains a vague exclusion that IPAM will not deal with a complaint if “it relates to the responsibilities, commitments or actions of any third party, rather than to issues that are under the control of the Client or the Bank.” At the same time it also stipulates that IPAM staff and any consultants engaged by IPAM shall protect the confidentiality of all documents and information not in the public domain. These provisions would further limit IPAM's ability to hold FI operations accountable. This broad restriction on disclosure is out of line with the Independent Accountability Mechanisms Network's [guidelines](#) on good practice and should be modified.

We believe that through these changes the governance policies could be improved and are looking forward to an ambitious outcome for this review process.

Kind regards,



Igor Vejnović, on behalf of the following signatories:

CEE Bankwatch Network



Bank Information Center Europe



Counter Balance



International Accountability Project



WWF Adria



Shoqata e Bujqesise Organike - Organic Agriculture Association, Albania



Centre national de coopération au développement, CNCD-11.11.11, Belgium



Center for Environment, Bosnia and Herzegovina



Balkanka Association, Sofia, Bulgaria



Zelena akcija/Friends of the Earth Croatia



Ecological Society Green Salvation,  
Kazakhstan



urgewald, Germany



Green Home, Montenegro



Centre for Research on Multinational  
Corporations (SOMO), the Netherlands



Both ENDS, the Netherlands



Center for environmental research and  
information "Eko-svest", North Macedonia



Environmental Citizens' Association Front  
21/42, North Macedonia



Renewables and Environmental  
Regulatory Institute, Serbia



Focus Association for Sustainable Development, Slovenia



CAFOD, UK



Christian Aid, UK



Accountability Counsel, USA



Gender Action, USA



Center for International Environmental Law (CIEL), USA



Inclusive Development International, USA



Defenders Protection Initiative, Uganda



Community Resource Centre Foundation, Thailand



Phenix Center for Economic and  
Informatics Studies, Jordan



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