Joint NGO comments on the draft EBRD Mining Strategy 2024-2028

General comments

1. **Focus of the strategy**
   - **The name and framing of the strategy needs to be widened to concentrate on creating a circular economy** for sectors requiring metals and minerals – not to merely concentrate on mining. The EBRD's Municipal and Environmental Infrastructure (MEI) strategy covers municipal waste, but no other sectoral strategy covers other areas like manufacturing that play a key role in ensuring circularity. The EBRD Transport Strategy and draft Energy Strategy also contain no consideration of the increasing E&S impacts of critical raw materials mining necessary for e-transport and renewable energy development and the measures required to mitigate it by integrating a circular economy approach and overall consumption reduction. The EBRD must ensure the scale of investments corresponds with the countries' sustainability capacity. Investments in e-taxi or e-public transport, with no investments in effective urban planning to decrease transport consumption, will not result in significant E&S improvement in the long-term perspective. Similarly, investments in large-scale renewable energy sources with no investments in sustainable/toxics-free production of required elements, recycling infrastructure, and energy demand mitigation will significantly diminish their potential benefits and exacerbate environmental and social problems.
   - **The first step to improving the social licence to operate of the mining sector is to more convincingly analyse what has gone wrong so far and how to tackle it**. There is some very superficial analysis of the current strategy implementation but not of wider impacts of mining so far in the countries e.g. Mongolia.
   - **Technical assistance is needed for circular economy and material footprint reduction** regarding critical raw materials, including in the EU. The EBRD must concentrate on this in its strategy.
   - **The EBRD must avoid greenwashing by just adding renewable energy to otherwise unsustainable mining projects**. It must take responsibility for all impacts of a certain project or, in the case of equity investments, all the client's activities.
   - **The Strategy should concentrate on material recycling investments** for critical raw materials within the EU and its other countries of operation. The European Commission's proposed Critical Raw Materials Act includes a target of 15% of the EU's annual consumption of critical raw materials to come from domestic recycling by 2030. But as a recent Allianz report pointed out,

     > *'Recycling technologies exist for most CRMs, some promising swift commercialization and scale-up. There are also ongoing projects in the EU for recycling EV batteries and developing rare-earth magnet recycling operations, driven by EU regulations and funding. However, to make significant contributions, recycling will need to scale up faster than mining production and rely on efficient systems and sufficient end-of-life products.'*[1]

   - **The EBRD should not invest in mining projects in countries which do not have a proven track record in enforcing environmental legislation**, i.e. where the country has not demonstrated its ability to properly enforce environmental and social standards

[1] Allianz Research, Critical raw materials: Is Europe ready to go back to the future?, 1 August 2023.

under international law (e.g. open files at the Aarhus Convention, Bern Convention, Espoo Convention, Energy Community) – not only in the mining sector but across the board.

- **The Strategy must not include coking coal.** We agree that the Strategy must not include thermal coal and uranium, but it is not clear whether it is currently planned to include coking coal since it is in the 2020 EU list of critical raw materials. The EBRD needs to explicitly exclude it from its activities.

2. **Environmental, social and integrity safeguards**

We are aware that these are usually covered by the Environmental and Social Policy (ESP) and the Office of the Chief Compliance Officer. However, the ones below are particularly relevant for mining projects and should be included in the mining/circular economy strategy as well to inform the scale and location of the projects. Moreover, according to ESP 2019, the EBRD's sectoral strategies should integrate consideration of potential environmental and social challenges associated with the envisaged activities.

- **Integrity due diligence must be carried out not only on the client, but also on the relevant country institutions** if real benefits for the public are to be achieved.
- **The EBRD's due diligence must properly assess the country's ability to regulate the mining industry**, enforce environmental legislation and ensure protection of public health, not only the client's ability to apply it.
- **The EBRD must ensure an SEA process and accompanying public consultation** is carried out for plans/programmes in the critical raw materials sector -- encompassing circular economy and material footprint reduction aspects – and spatial plans in each country.
- **No-go zones must be established for mining projects**. These should include the Banks&Biodiversity criteria:
    - Areas recognized by international conventions and agreements;
    - Nature, wilderness, archaeological, paleontological and other protected areas that are nationally or sub-nationally recognized and protected by law or other regulations/policies:
    - Habitats with endemic or endangered species, including key biodiversity areas;
    - Intact primary forests and vulnerable, secondary forest ecosystems, including but not limited to boreal, temperate, and tropical forest landscapes;
    - Free-flowing rivers, defined as bodies of water whose flow and connectivity remain largely unaffected by human activities;
    - Protected or at-risk marine or coastland ecosystems;
    - Any Indigenous Peoples and Community Conserved Territories and Areas (ICCAs), community-based conservation areas, formally, informally, traditionally, customarily held resources or areas, Indigenous Territories, sacred sites and/or land with ancestral significance to local and Indigenous communities' areas where the free, prior, informed consent of Indigenous and Local Communities have not been obtained;
    - Iconic Ecosystems, defined as ecosystems with unique, superlative natural, biodiversity, and/or cultural value which may sprawl across state boundaries, and

thus may not be wholly or officially recognized or protected by host countries or international bodies, e.g. the Amazon, the Arctic;

In addition, the availability of high-quality arable land in each country needs to be taken into account and avoided.

- **Due diligence must be carried out on all impacts of a mining complex or in cases of equity investments, in all a client's activities**, not only the EBRD-funded project.
- **Exploration projects can cause significant damage and their impacts must be properly assessed** and categorised. Public consultations need to be held.
- **The EBRD needs to clearly exclude certain technologies** such as cyanide leaching and any other untested/unproven technologies; or any technologies or techniques where there is a potential for the release of toxic materials during normal operations or as a result of accidents.
- **Avoid building new tailings dams and set out specific requirements for existing tailings facilities**. In 2022, over 160 frontline community groups, Indigenous Peoples, environmental and human rights NGOs, and scientists from 32 countries endorsed a set of 17 guidelines for safer tailings storage. The guidelines, Safety First: Guidelines for Responsible Mine Tailings Management, provide concrete steps that must be taken to move away from the riskiest technologies, to ensure consent from affected communities, to establish transparency and to hold mining companies accountable for implementing best practices. Besides requiring Free Prior Informed Consent from Indigenous Peoples and consent from affected communities, specific recommendations include, among others:
    - Operating companies must publicly disclose all information relevant to the safety of tailings facilities, including raw data
    - Independent evaluations must be done for all aspects of tailings facility design, construction, operation, and maintenance.
    - Design for tailing facilities must take climate change (e.g. flooding, glacier melting) into account for both closed and operating facilities;
    - New tailings facilities must not be constructed if the operator cannot ensure the safe and timely evacuation of communities in the area, and where a tailings failure would materially impact public water supplies or critical habitat;
    - Operating companies must not be allowed to declare bankruptcy or sell to junior companies to avoid closure monitoring and liability and must provide sufficient funding and financial securities for closure and post-closure monitoring and maintenance.
- **All mining projects must be classified as 'A' category**.
- **Take responsibility for mine exploitation investments** - don't just finance 'equity' or 'exploration', but instead admit from the outset of the Bank's consideration of the project that the Bank may support mine exploitation, and carry out due diligence accordingly.
- **An explicit exclusion of deep-sea mining must be included in the Strategy**.
- **The EBRD must ensure that effective remedy is built into its metal and minerals projects**, including insurance that covers damage to community health/pollution, and damage to public infrastructure.

- **The need for Free, Prior and Informed Consent for Indigenous Peoples must be underlined in the Strategy**. We appreciate the mentions of Indigenous Peoples on p.13 of the draft, but more in-depth exploration of the potential impacts is needed. With over 50% of Energy Transition Mineral mining globally taking place on or near Indigenous Peoples' lands,[2] and the EBRD prioritizing these minerals, the specific risks to Indigenous Peoples should be analysed in more depth. Indigenous Peoples have distinct rights and should thus not be conflated with other local communities. In particular, Indigenous Peoples' rights should be emphasised in the second part of the strategy where focus areas are defined, especially in the areas of mining company support and government assistance.
- **Community consent must be obtained for all mining projects** (positive example: IFAD). National legislation for declaring 'strategic projects' or nationalisation of 'strategic assets' should not be accepted by the EBRD as a sufficient basis for a project to proceed, as it does not indicate consent.

3. **Community and country benefits**
   - **Both project-level due diligence and technical assistance for legislative changes must include fair benefit sharing for the country**. A country-level cost-benefit analysis must be carried out, including potential environmental and social costs, as well as a comparison with other countries globally. Country part-ownership can lead to indebtedness and conflict of interest in regulation but the concession model also often leads to countries not benefiting sufficiently. This needs to be assessed in each case.
   - **Clients must cover the cost of public infrastructure and services needed for mining projects** (health care, transmission lines, roads and railways, fresh water infrastructure).
   - **Communities need to concretely and systematically benefit from mining projects**, not only receive tokenistic community projects. The EBRD should set a clear goal only to support mining projects that can provide a lasting source of income to local communities and Indigenous Peoples, through revenue sharing and/or share ownership modalities, or other forms of formal agreements discussed and agreed with the affected people. Tokenistic community development projects sponsored by mining companies should not be considered as meeting this criteria.
   - **Mine closure funds need to be created at a level that corresponds to the expected cost of closure and the size of the project**. It needs to be ensured that they are available for implementation also in case of potential changes of ownership. Where necessary, the EBRD needs to provide technical assistance to ensure that appropriate legal provisions are in place.

Specific comments

p.14 *'Shifting from a "do no harm" approach (e.g. mitigating environmental and social impacts) towards also actively looking to create positive social impacts'*

Comment: This is a very optimistic view of how the mining industry is acting. In the cases we are familiar with (e.g. Adriatic Metals), the EBRD's clients are not even fulfilling the basics of the EBRD's Environmental and Social Policy such as meaningful consultation, carrying out EIAs that

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[2] Owen, J.R., Kemp, D., Lechner, A.M. *et al.* Energy transition minerals and their intersection with land-connected peoples. *Nat Sustain* **6**, 203–211 (2023). https://doi.org/10.1038/s41893-022-00994-6

cover the whole project, avoiding damage to critical habitat etc. There should not be a 'shift' but a focus on getting the basic safeguards right, accompanied in parallel by more work to ensure positive social impacts.

p.14 '*Some traditional methods used by companies to manage social pressures have not fully delivered (e.g. community funds created with a small fraction of a company's turnover) have often disappointed because of poor management or a lack of vision and insufficient community and stakeholder involvement.*'

Comment: These reasons for non-delivery are valid, but the main one is missing: Community funds cannot undo environmental and social harm done by projects. If a community does not see benefits from the project itself, but only damage and pollution, then community funds look more like an attempt at bribery than a good faith attempt to assist the community.

p.16 2.3 The level of stakeholders' scrutiny on ESG matters is increasing (iv)

Comment: The analysis on this page re. the Kunming-Montreal Global Biodiversity Framework seems to stop half way through, in the sense that it doesn't actually say what the implications of this agreement are for the mining industry.

p.19 '*Many companies have set ambitious targets to diversify their workforces. The wider community has welcomed these goals*'

Comment: Who is the 'wider community'? Such claims need to be more precise.

p.20 *'Sharing Benefits: Through improvement of targeted CSR policies and practices towards the more equitable distribution of mining revenues generated at national and local levels, mining can bring sustainable benefits to local populations in the most-impacted and least-developed regions.'*

Comment: When governments try to make sure the country benefits from mining revenues, this is usually branded as 'resource nationalism'. Given that the Bank has rightly admitted earlier in the draft that community funds often don't work, what model does it propose to implement this goal?

p.21 '*Standards: By adopting EITI standards on contracts, revenues and beneficial ownership, transparency and practices can improve, thus helping attract private investment to the sector and enhance development outcomes.'*

Comment: The EBRD cannot rely solely on the EITI, which has in practice proven to be too weak to be effective.[3] It needs to demonstrate how it will close the gaps left by the EITI.

p.24 '*Priorities for the 2024-2028 Strategy*
- Selectively support the exploration and production (primary and secondary) of metals and minerals relevant to the green energy transition, digital economy and wider economic development.
- Support the decarbonisation of mining activities through promotion of cleaner energy sources, innovation, digitalisation, skills development and resource efficiency.
- Support mining companies improve their environmental, social, inclusion and governance practices.
- Assist governments in improving regulation and the business environment to facilitate the implementation of best practices in the sector.

[3] See for example Transparency International, EITI must reinforce anti-corruption provisions, 1 March 2023.

Comment: See our general comment on the scope of the Strategy. Also, in practice, the EBRD has simply not shown itself capable of bringing significant improvements in the environmental and social impacts of the mining sector or its benefits for countries and local communities (Oyu Tolgoi, Amulsar, Adriatic Metals). We therefore recommend much more emphasis on investments that develop a circular economy and reduce the materials footprint e.g. of the EU. For mining projects, the EBRD needs to clearly state what it will do differently in the future, and needs to ensure that project insurance clearly includes damages for affected communities, including in case of future changes in ownership of the mine.

In addition, supporting exploration projects can lead to uncontrolled environmental and social impacts when the EBRD has not taken responsibility for also supporting production afterwards. For this reason, exploration projects should be subject to increased environmental assessments and public consultations, and the EBRD should also assume from the outset that it is planning to invest in the subsequent exploitation of the mine so that environmental and due diligence can be carried out holistically. As stated above, where due diligence (including an assessment of the authorities' ability to apply the law) shows that the project is high-risk, the EBRD should not invest even in exploration.

p.25 *'Increase share of investments in the exploration phase of materials critical to the green and digital transition as well as CRMs. To this end (i) develop financial products that allow the Bank to de-risk exploration projects, such as financial guarantees, risk-sharing products and others, with the support from other interested partners (e.g. European Commission); and (ii) leverage the Bank's expertise in mine financing to mobilise non-traditional sources of mine funding (either through co-investment or co-lending) to manufacturers / end-users of minerals (e.g. EV battery producers / car companies / utilities).'*
Comment: See above comment.

p.25 '*Support circular economy with investment and/or advisory work including the remediation and recycling projects with a view to increase the secondary production of minerals'*
Comment: Circular economy investments should concentrate mainly on the demand side. Recycling mine waste reduces primary extraction but still tends to involve the use of damaging chemicals, so cannot replace demand reduction on the demand side.

p.26 '*Conduct policy and advisory services with governments on circular economy policy development for the mining sector (such as the use of mine waste and secondary materials sourcing) as well as advisory work to adopt low carbon pathways to decarbonise the mining sector. Equally, support mining companies to develop low carbon pathways that lead to GHG emissions reduction.'*

Comment: At this stage of the climate emergency, 'low carbon' is no longer sufficient – full decarbonisation is needed.

p.27 '*Promote and implement international best environmental, social (including human rights and labour rights), inclusion and governance practices and standards at project and corporate levels.'*

Comment: This sounds good, but the problem is that the EBRD has not shown itself able to follow and enforce these standards in mining projects itself (e.g. Oyu Tolgoi, Amulsar, Adriatic Metals).

p.27 *'Encourage the use of nature-based solutions to manage mine related impacts and support nature related investments, including recovery of degraded ecosystem and enhancing biodiversity.'*

Comment: This could be welcome as long as they are really bringing additional value and are not attempting to offset damage. As the EIB has already recognised when updating its Environmental and Social Safeguards Framework, biodiversity offsets have a very low success rate and at this stage of the biodiversity crisis, the EBRD needs to make a much clearer commitment to prevent biodiversity damage instead of hoping to offset it.

p.30 *4.1 Theory of Change*

Bank funding (for on-lending or capital support) > Investments > New/improved environmental, social, corporate and regulatory standards introduced and adhered to

Comment: In reality, it has not worked like this. In projects such as Adriatic Metals as well as non-mining projects like the Vinča incinerator and the Greece-North Macedonia gas interconnector, the EBRD has – rightly – taken the stance that the national level EIA studies/processes were insufficient. But instead of engaging with the permitting authorities to improve their practices and make sure the EIA processes were done in line with the EU EIA Directive (bearing in mind that all the projects named took place in EU accession countries), the bank carried out its parallel ESIA process which did precisely nothing to increase the authorities' capacity to ensure adequate environmental assessments.

Nor does it often result in substantially better practices by the project promoters in reality, because a) the EBRD does not take public comments on the ESIAs into account, it just passes them onto the promoter to answer, and does not appear to carry out significant quality control of the answers given; and b) the ESIA is not part of any national procedure so it is binding only between the EBRD and the client. But the EBRD cannot be on the ground all the time, so monitoring of implementation is very low-level.

The EBRD's lack of engagement with the national-level permitting processes and national law enforcement is a missed opportunity to strengthen their capacity in line with EU/EBRD requirements, so the Bank needs to explain what it will do differently in the future.

p.31 *'Selectively support the exploration and production (primary and secondary) of metals and minerals relevant to the green energy transition, digital economy and wider economic development.*
Outputs:
• *Number of investments in minerals/metals exploration and development.*
• *Number of investments in minerals/metals critical for the green energy transition.*
• *Number of clients adopting an action plan for strengthening value chains.*
• *Number of operations supporting privatisation and private-sector-led mining of minerals/metals'.*
Outcome:
• *Volume of minerals/metals sourced from local/regional supplier(s).*
• *Number of clients with improved operational performance.*
Impact:
• *Fostering private sector participation (Source: EBRD assessment; ATQ score)*

Comment: If the goal is to support mining operations 'selectively', then having numerical indicators does not support the goal, because it encourages quantity, not quality. The indicators should rather focus on the *qualities* those projects will have. And if the only impact is private sector participation then it is not clear why the focus is on new mines as this could also be achieved by privatising existing ones.

p.37 *Annex 4: Implementation of the previous strategy (2018-2023) (I) -* Bottom right

Comment: What do the figures on projects per mineral refer to? They don't seem to add up to either the total projects number nor the current portfolio number.

p.38 *Annex 4: Implementation of the previous strategy (2018-2023) (ii)*

Lessons learned during the previous strategic period

Comment: Considering the major environmental and social problems, as well as public dissatisfaction, encountered in some of the EBRD's mining projects, we would expect a more in-depth analysis of the lessons learned, particularly with regard to due diligence, stakeholder engagement, national and local authorities' capacity to regulate the sector, country and community benefits, integrity risks, and remedy in case of damage to public health, public infrastructure, common and private property and the environment.

p.39 *Annex 4: Implementation of the previous strategy (2018-2023) (iii)*

Comment: According to our research, out of the nine projects on this page, only three had Project Summary Documents (PSDs) disclosed within the normal timeframe set out in the EBRD's Access to Information Directive.

One of them does not appear to have a PSD at all (Erdene), four had PSDs disclosed *after* Board approval (KGHM, ZCMC, AYA and Euro Manganese). One had its PSD disclosed before Board approval but is marked as subject to a deferral (Kyzyl), although the disclosure date was more than 30 days before the approval date in the end. We assume the approval date may have been delayed.

While the Bank's Access to Information Policy and Directive do provide for deferrals, the fact that two-thirds of the projects suffered some kind of delay is not a good signal for a Strategy that seeks to improve the mining sector's social licence to operate. The EBRD needs to analyse in more detail how it can ensure that stakeholders are informed in a timely manner about its potential involvement in projects with potentially serious environmental and social impacts, so that they can assist the Bank's due diligence by bringing forward any concerns and suggestions they may have.

Thank you for reviewing our comments.

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On behalf of:

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CEE Bankwatch Network	
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ECHO	
EcoLur Informational NGO, Armenia	
FIDH - International Federation for Human Rights	

Gobi Soil NGO, Mongolia	
Green Armenia environmental educational NGO	
Initiative group of public control "Let's save Samarkand", Uzbekistan	-
NGG Park prirode Trstionica i Boriva (Kakanj), Bosnia and Herzegovina	
NGO “Danube-Carpathian Programme”, Ukraine	
NGO ECO GURT, Ukraine	
NGO Ecological News, Ukraine	-
NGO SaveDnipro, Ukraine	
NGO Zero Waste Society, Ukraine	

Oil Workers' Rights Protection Organization Public Union, Azerbaijan	
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