

Joint CSOs comments on the ongoing revision of the EBRD's Environmental and Social Policy and Directive on Access to Information with a particular focus on the EBRD human rights due diligence

Summary

- The EBRD should publish its up-to-date environmental and social due diligence procedures so that civil society organisations are then capable of conducting meaningful scrutiny as well as giving credit where it is due.
- The EBRD environmental and social safeguards should integrate consideration of contextual risk factors (i.e. country risks such as poor human rights and environmental law enforcement) into project categorisation to ensure effective risks and impacts assessment and management to prevent human rights violations.
- The EBRD should clarify thresholds for projects of high risks and impacts and ensure the project categorisation is done irrespective of the type of EBRD engagement (loan or equity).
- The EBRD should significantly improve its transparency by disclosing project-related E&S documents for Category B and FI projects that in 2021 comprised 94 per cent of its portfolio, and environmental and social monitoring reports for all projects, to facilitate meaningful rightsholders engagement and comprehensive assessment and management of risks and impacts.
- The EBRD's project due diligence should include mandatory site-visits and engagement with rightsholders, starting from risk screening to inform the project design and risk categorisation, and during the project impact assessment, implementation and monitoring to ensure adequate assessment and effective mitigation measures. The findings of the EBRD project due diligence should be disclosed on a regular basis.
- The EBRD should start systematic reporting on monitoring of project performance on environmental, social and human rights as part of its transition impact assessment in order to provide institutional learnings and inform investment priorities under the country and sector strategies, as well as safeguards improvement.

1. Integration of social, human rights and contextual risk factors in project categorisation and clarification of environmental categorisation criteria

Since the project category affects the scope of the project appraisal and resources allocated by the Bank to conduct an impact and risk assessment, management and monitoring, it is essential to ensure it is adequate to the project's risk and impact level.

Currently, the EBRD approach to categorisation, reflected in the ESP, suggests A-B-C categories. This process is mainly guided by an indicative list of projects (ESP, Appendix 2) and sectors (in case of FIs¹) for which the banks typically require full or limited environmental and social impact assessment. Currently, a formalised and participatory environmental and social impact assessment is mandatory only for a project categorised A. For a project categorised B, the scope of environmental and social appraisal is determined on a case-by-case basis. The ESP uses terms like "significant", "minimal"

¹ European Bank for Reconstruction and Development, [EBRD Environmental and Social Risk Categorisation List – Revised 2014](#), European Bank for Reconstruction and Development, 2014.

and “site-specific” to describe and assess the potential impacts. Without having the EBRD’s up-to-date environmental and social due diligence procedures disclosed, altogether it creates uncertainty on the Bank’s risk criteria and overall approach to categorisation.

The Appendix 2 of the ESP lists types of projects considered category A projects, which ‘could result in significant environmental and/or social impacts that are additional and new and therefore require an environmental and social impact assessment’. However, only two of thirty-two refer strictly to social impacts. Moreover, some project types, including the two referring to social impacts, lack thresholds, for example:

- in terms of scale size (25. Large-scale wind power installations for energy production),
- number of affected people (e.g. 31. Projects which may result in significant adverse social impacts to people or group(s) of people who are affected or likely to be affected directly or indirectly by the project)
- or a “significance” indicator (e.g. 32. Projects which may involve significant involuntary resettlement or economic displacement.).

It may result in subjectivity and inconsistency of risk categorisation.

Thus, all waste management projects (except incinerator construction) disclosed by the EBRD during 2020-2022, were classified as Category B,² while Appendix 2 of the ESP clearly lists “large-scale municipal solid waste-processing and disposal facilities” as types of Category A projects. For example, the recent Karakalpakstan Solid Waste Project³ and Horezm Solid Waste Project⁴ in Uzbekistan, aiming for the construction and extension of the landfills, were classified as Category B. Confusingly, the EBRD did not assign the highest risk category to the projects even though they were subject to national EIA, assuming high environmental risks.

Sometimes, the project categorisation is predefined by the type of the EBRD’s involvement rather than the project risk and potential impact. Thus, equity investments may be categorised as B, even if they aim to support developing or expanding environmentally and socially risky mining projects. For example, the DFF Adriatic Metals mine slated for Vareš in Bosnia and Herzegovina has been designated a category B project. Since the EBRD is providing equity funding to Adriatic Metals, the company responsible for the project, the Bank claims it is not directly financing the mine itself, only monitoring the development of the project as part of its shareholder subscription. The project has already had widespread negative impacts on forested areas and waterways. It resulted in an IPAM complaint claiming environmental damage, and lack of public consultations in the town of Kakanj and comprehensive impact assessment.⁵

Additionally, consideration of the contextual risks and impacts, which can vary depending on the country and client, is notably absent in the list of Category A projects, because of the sole focus on project type and not country environment. In

² In 2023, Bankwatch conducted a study of the EBRD’s municipal and environmental infrastructure (MEI) projects published between 2020 and 2022 and concluded that 86 per cent of the EBRD MEI projects were classified as category B projects, and 48 per cent of them involved the construction or extension of landfills and wastewater treatment facilities.

³ European Bank for Reconstruction and Development (EBRD), [Karakalpakstan Solid Waste Project](#), Project Summary Document, accessed 4 December 2023.

⁴ European Bank for Reconstruction and Development, [Horezm Solid Waste Project](#), Project Summary Document, accessed 4 December 2023.

⁵ Martina Vranic, DFF Adriatic Metals Project, Bosnia & Herzegovina, [issue paper](#), CEE Bankwatch Network, 16 May 2023.

particular, risks of reprisals, restrictions to freedom of speech and associations, and civic space are not reflected in the list of Category A Projects.

For example, 95 per cent of the agribusiness projects disclosed on the EBRD website (2020-2022) were classified as category B projects, regardless of the human rights situation in the country. In 93 per cent of MEI projects classified as Category B, funding was allocated to public sector clients in countries with high levels of corruption and serious human rights violations, such as Egypt, Turkey, Morocco and Uzbekistan. This increased risk has a high potential to impact the environmental and social performance of projects as state control bodies do not adequately perform their duties. Confusingly, projects to be implemented in, for instance, Croatia and Tajikistan have been assigned to the same category.

The EBRD claims it applies a range of tools to assess the contextual risks, but the methodology and overall process need to be transparent and reflected in the ESP and categorisation approach to ensure effective mitigation, including specific measures to prevent and respond to context-related risks and impacts such as retaliation.

According to the EBRD's 2022 Sustainability Report⁶, 40 per cent of EBRD projects signed in 2021 fell into the 'lower risk' B and C categories: category B projects made up 37 per cent of the portfolio, totalling 200 projects, whereas category A projects accounted for only 3 per cent of the portfolio, comprising just 17 projects. Of course, this would be positive if it accurately reflected a low percentage of high-risk projects in the Bank's portfolio; however, as outlined above, it appears to be partly due to the inadequate approach to social, human rights and contextual risks.

Therefore, we recommend the EBRD to:

- disclose its updated due diligence procedures, including on contextual risk assessment and categorisation process, to clarify when rightsholders can help inform the project categorisation process;
- incorporate contextual risks into the project categorisation approach presented in the ESP;
- include in Appendix 2 clear thresholds for category A project types;
- supplement the Appendix 2 with well-defined criteria for consideration of contextual risk factors, including human rights risks, for the type of projects categorised A;
- clarify that the categorisation will be carried out solely in terms of the project's impacts, not on the type of EBRD engagement, with the exception of FI projects;
- clarify that the projects which are a subject to national EIA will be assigned A category to ensure participatory EBRD decision-making, including gap analysis and comprehensive assessment and mitigation of social risks and impacts.
- include provisions allowing change of project category on developing circumstances and availability of more detailed data;
- complement the Directive on Access to Information (Paragraph 1.4.6) with a requirement to disclose the key findings of the EBRD pre-approval environmental, social and human rights due diligence, including consideration of contextual risks and additional mitigation measures to be taken by the Bank to address them.

2. Disclosure of environmental and social project documentation

⁶ European Bank for Reconstruction and Development (EBRD) Sustainability [Report](#) 2022.

Environmental, social and human rights project related information disclosure is critical in enabling rightsholders and stakeholders to verify information and meaningfully engage during the project appraisal and implementation. The EBRD operates in 39 countries, including 3 countries with suspended investments. According to the Global Right to Information Rating,⁷ which assesses the strength of the legal framework for the right to information in a country, only 9 of these 39 countries have a high rating. At the same time, 97 per cent of EBRD projects from the current portfolio, which fall into the B, C and FI categories, do not require the EBRD to disclose complete environmental and social project related information.

Category A. Currently, the ESP requires participatory risk and impact assessment and management for category A projects. This entails disclosing the Environmental and Social Impact Assessment package, which may include ESIA, ESMP, ESAP, SEP, RAF, LRF, Biodiversity Management Plan. However, more transparency on risk and impact management plans such as a Gender Action Plans, Community Development Plan, Health and Safety Plans, etc. is needed. If the EBRD decides to develop a separate action plan to address retaliation risk, containing prevention and response measures, it should be also disclosed. This information may help rightsholders and stakeholders to make informed decisions on the project risk and impact during public consultations and provide substantial feedback on mitigation measures during the project appraisal and monitoring.

Category B. Currently, the scope of environmental and social appraisal for category B projects, including project information disclosure, is determined by the EBRD on case-by-case basis. There is a significant increase of Category B projects in the EBRD portfolio, as well as an increase in the number of complaints lodged against category B projects,⁸ with the key concerns raised by the complainants relating to assessment and mitigation, information disclosure, and rightsholders and stakeholder engagement.

According to the available information on the EBRD's website, only 45 per cent of the EBRD's MEI projects (2020-2022),⁹ largely B categorised, were accompanied by non-technical summary (NTS) disclosure and 35 per cent by a stakeholder engagement plan (SEP) disclosure. Tellingly, none of the projects featured an environmental and social action plan (ESAP) disclosure. Moreover, only in 40 per cent of these cases, when the public sector clients enjoyed significant technical cooperation, information about the size of the grants was disclosed.

In the main, public sector clients received funding to undertake due diligence activities, such as project feasibility assessments, livelihood restoration and resettlement frameworks (LRRFs), Green City Action Plans (GCAPs), and assessments of energy efficiency in public buildings as well as equal opportunities in the solid waste sector. This funding also extended to project support, such as ensuring ESAP implementation, procurement and client capacity-building, and conducting development programmes, such as tariff reforms, youth skills training programmes, and awareness campaigns on waste segregation or gender-based violence and harassment in the workplace. These activities are often carried out with the assistance of consultants. However, the EBRD has published just a few of the outcomes of these technical assistance grants. More transparency on technical cooperation grants can help with addressing integrity risks, verifying client information and meaningful rightsholders and stakeholder engagement in project preparation and monitoring.

Category FI. As for projects managed by financial intermediaries (FIs), the ESP requires disclosure of project related information by the client and the EBRD if the sub-project includes activities categorised as being of high risks and impacts

⁷ Global Right to Information Rating, [Rating](#), Global Right to Information Rating, accessed 15 September 2023.

⁸ The Independent Project Accountability Mechanism (IPAM) Annual Reports: [2020](#), [2021](#), [2022](#).

⁹ In 2023, Bankwatch conducted a study of the EBRD's municipal and environmental infrastructure (MEI) projects published between 2020 and 2022.

(Category A projects). Besides, information on sub-projects disclosed by the EBRD or the client is notably scarce. Despite the ESP stating that the EBRD should assess the environmental and social risks and impacts associated with the FI's existing portfolio and expected future projects, and the measures necessary to strengthen the FI's existing environmental and social management system, very little information about these findings has been disclosed. It may not only prevent the EBRD from meaningful engagement with stakeholders to effectively assess and mitigate the risks and impacts, but also limit the rights of potentially affected stakeholders to access the EBRD's accountability mechanism.

Thus, a study of the gender impact of EBRD investments in Uzbekistan¹⁰ revealed that, of the two private banks receiving EBRD loans, only one had publicly shared information about its EBRD loan and the overall project implementation and had committed to engaging with stakeholders. By comparison, the Asian Development Bank (ADB) provides much more detailed information on due diligence findings and the mitigation measures it applies to FI clients.¹¹ This includes information on stakeholder engagement, grievance management and the monitoring of performance indicators.¹² Additionally, the draft Transparency Policy of the US International Development Finance Corporation (DFC) proposes the disclosure of ESAs for all FI investments over USD 10 million.¹³ This threshold is likely too high, as any EIA for an FI investment should be disclosed, but it represents an increasing awareness that FI investments can sometimes have serious impacts.

All projects. The EBRD requires its clients to provide regular environmental and social monitoring reports to ensure ongoing due diligence but doesn't disclose them. For Category A projects only, the Bank entrusts the clients to publish annual reports, but it may not be published (e.g., Indorama Agro cotton project in Uzbekistan). Monitoring information for other categories is scarce. Stand-alone monitoring reports from the borrowers or consultants are not actively published by the EBRD. By comparison, the Asian Development Bank (ADB)¹⁴ consistently discloses environmental and social as well as financial audit reports for its projects.

Recently, the EBRD started to publish State Sector Operation Performance Assessment (OPA) Reports.¹⁵ Out of hundreds of ongoing projects, 17 reports are now available, covering projects related to energy (8), municipal and environmental infrastructure (6) and transport (3). However, these reports lack information on the environmental and social project performance and underperformance, progress and effectiveness of the proposed ESAs, as they are focusing more on the achievement of project objectives and transition impacts.

¹⁰ Irina Matvienko, Nina Lesikhina, [Balancing gender opportunities and risks: Gender impacts of the EBRD's investments in Uzbekistan](#), CEE Bankwatch Network, Nemoichi.uz, 2 March 2022.

¹¹ Asian Development Bank (ADB), KMF Expanding Access to Credit for Micro, Small, and Medium-Sized Enterprise Borrowers Project (FAST Report KAZ 53329), [Financial Intermediary: environmental and social management system arrangement](#), accessed 4 December 2023.

¹² Asian Development Bank (ADB), Project Number: 56134-001, Bond Joint Stock Company Microfinance Organization Crystal, [Crystal Gender Bond Project](#) (Georgia), October 22.

¹³ US International Development Finance Corporation, [Transparency Policy \(Draft\)](#), US International Development Finance Corporation, 7 August 2023.

¹⁴ Asian Development Bank (ADB), Uzbekistan: Affordable Rural Housing Program: [Environmental Monitoring Report](#) (January-December 2022), March 2023.

¹⁵ European Bank for Reconstruction and Development, [State Sector Operation Performance Assessment \(OPA\) Reports](#), European Bank for Reconstruction and Development, accessed 4 December 2023.

The DFI Transparency Index 2023¹⁶ scores the EBRD fifth in the ESG and Accountability to Communities component in sovereign and non-sovereign assessments. It suggests that the EBRD should publish environmental and social documents for all investments, provide assurance of community disclosure for investments when disclosure is required, and develop policies for FI sub-investment disclosure and disclose sub-investments for both private equity fund and qualifying bank investments.

Therefore, we recommend that the EBRD considers making the following changes (marked in bold) to the **Directive on Access to Information**:

Section IV (Scope)

1.4. Project Information

1.4.1. Project Summary Document

*x. if applicable, details of Project-related technical assistance funding and grant financing, **including amount and outcomes of the funded technical assistance activity as soon as they are finalised**;*

xiii. in the case of FIs, the sponsor, name, location, and cost of the sub-project, whether the sub-project is subject to an EIA, as well as the date of approval and signing for each referred sub-project.

1.4.3. PSDs for technical assistance activities

*PSDs shall be provided for grant-funded technical assistance activities that are not related to a specific Bank financing, when these technical assistance activities exceed EUR 300,000. These PSDs shall be disclosed following internal approval by the Bank of the relevant technical assistance activity **and be updated with information about the outcomes of the funded technical assistance activity.***

1.4.6. Environmental and Social Information Relating to Projects

iii. For Category A and Category B Projects, the PSD disclosed by the Bank shall include:

*f. a link to the ESIA web page for Category A Projects, **providing access to the ESIA package, including environmental and social management plans developed to mitigate Project impacts**; and*

...

h. environmental and social risk and impact assessment, a stakeholder engagement plan and an environmental and social action plan for Category B Projects.

h. annual report on project environmental and social performance, including underperformance issues and timebound measures for their resolution.

v. For financial intermediary (Category FI Projects), the PSD disclosed by the Bank shall include:

¹⁶ Publish What You Found, [DFI Transparency Index 2023](#), accessed 4 Decembre 2023.

a. the categorisation of a Project and a summary of whether, the sub-projects (overall and in the aggregate) supported by the EBRD will likely be of low, medium or high environmental and social risk, **supported with findings of the EBRD's due diligence**;

b. a description of the main environmental and social risks and **impacts associated with the FI's existing portfolio and the EBRD's investment in the financial intermediary** and expected future projects;

...

d. key measures and **a timeline** identified to establish or strengthen the financial intermediary's ESMS, as needed and as articulated in an environmental and social management plan.

h. annual report on project environmental and social performance, including underperformance issues and timebound measures for their resolution.

1.4.7. Updates to PSDs

iii. For Category A and Category B Projects ~~associated with significant environmental and social risks and impacts~~, the environmental and social sections of the PSD will be reviewed annually and updated ~~as appropriate with annual reports on project environmental and social performance, including underperformance issues and timebound measures for their resolution, and ESAP implementation.~~

... For financial intermediary (Category FI) Projects, the environmental and social sections of the PSD will be reviewed **annually** and updated as appropriate, including by way of hyperlinks to the information disclosed by financial intermediary on its website on sub-projects referred to the EBRD in accordance with the ESP.

3. Mandatory engagement and sourcing of information from rightsholders during EBRD due diligence

According to the Global Freedom Status,¹⁷ 28 countries within the EBRD's area of operations are categorised as 'not free' or 'partly free', which implies a more active role by the Bank in ensuring participatory decision-making at least at the project level. It should also relate to the EBRD's environmental, social and human rights due diligence, including risk and impact screening, assessment and management, and project monitoring. The Recently updated OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, which also apply to the IFIs, require meaningful engagement with rights-holders as a part of carrying out due diligence and in order to provide opportunities for their views to be taken into account with respect to activities that may significantly impact them.¹⁸ The Universal Declaration of Human Rights defines public participation in decision-making as a human right.¹⁹ The UN Guiding Principles on Business and Human Rights makes it clear that without understanding the concerns of potentially affected stakeholders, human rights assessments cannot be considered accurate.²⁰

Thus, consulting rights-holders should be required across all stages of the EBRD due diligence process, including the development of due diligence policy, the identification of risks and adverse impacts, the development of action plans, the

¹⁷ Freedom House, [Global Freedom Status](#), Freedom House, accessed 15 September 2023.

¹⁸ [OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#), 8 June 2023.

¹⁹ [The Universal Declaration of Human Rights](#), Paris, 1948.

²⁰ [UN Guiding Principles on Business and Human Rights](#), Geneva, 2011.

termination of business relationships, the development of remedial measures, the establishment of grievance mechanisms, and monitoring obligations.

Risks identification. According to the information provided by the EBRD staff during the relevant CSO workshops on human rights and interview, the Bank's approach to risk screening and assessment as part of its due diligence is rooted in a variety of data tools and internal sources of information to assess the project, client and context-related risks. However, this information and the current ESP provisions on the EBRD's approach to project appraisal lack information on whether site visits and sourcing information from rights-holders are seen as a mandatory part of initial due diligence for all projects. Sometimes, the EBRD summarises its due diligence in the Project Summary Document, including information on site visits and rights-holders engagement, but it is not always the case and/or it misses out details on the impact of these consultations on project categorisation, scope of due diligence and mitigation measures.

In many countries suffering from a democratic deficit, direct engagement with rights-holders may be beneficial to early-stage risk identification. Direct engagement is also crucial for informing project design at an early stage and the approach to risk mitigation. Moreover, since the EBRD's risk screening informs project categorisation, sourcing information from rights-holders may help to ensure adequate resources allocated by the EBRD for further environmental and social impact assessment, management and monitoring.

Take the example of the EBRD-funded Indorama Agro cotton project in Uzbekistan or Corridor Vc motorway in Bosnia and Herzegovina, that resulted in IPAM complaints, increased demands for EBRD capacity to engage with CSOs and other stakeholders to negotiate mitigation measures, delay in disbursements and reputational risks. Sourcing information from farmers and community members respectively during the EBRD's risk screening, could have helped to identify better the potential impacts, enabled the EBRD to allocate sufficient capacity to address them, to inform a better project design (eg., contracting model in the case of cotton project, route selection in the case of road construction), and potentially avoid costly delays and required modifications later on.

Improved transparency in recording initial identification or absence of actual or potential human rights risks and impacts as result of the EBRD's due diligence is needed to ensure meaningful engagement with rights-holders and stakeholders and accountability.

Impacts identification. The EBRD's current approach to stakeholder engagement may limit rights-holders' opportunities to exercise the right to participation in decision-making on its investments. This is because some of them, namely category B projects, do not require a participatory appraisal. In contrast, others, namely category A projects, engage with rights-holders at a stage when significant changes to the project, such as its design or location, are no longer feasible. Many of the EBRD's countries of operation suffer from a democratic deficit. This means that the governments in these countries may not always represent the interests of citizens, which can result in unfair elections or limitations on freedom of speech and assembly. Regrettably, the EBRD's inadequate approach to stakeholder engagement may reinforce a power imbalance between society, government and business, reinforcing repressive relationships.

Moreover, retaliation risks that remain unaddressed may become a significant limitation for meaningful stakeholder engagement. According to the current ESP, the EBRD entrusts the client with risk and impact assessment, including risks of retaliation against the rights-holders speaking out. The EBRD mainly assesses the client's capacity to prevent retaliation by checking for the presence of relevant policies, staff training, contractual obligations, grievance redress mechanisms (GRMs), disclosures, consultation processes, as well as safety and security management plans – all provided by the client.

Those are important steps, but more needs to be done by the EBRD to prevent and response to reprisal. The risks of significant retaliation – which are commonplace in countries suffering from a democratic deficit, in sectors with a legacy of human rights violations, and among clients allowed to exercise a power imbalance – may discourage the participation of communities and workers in consultations or applying a GRM, rendering the presence of these policies and mechanisms merely a formal indicator.

A recent study carried out by the Coalition for Human Rights in Development, based on an analysis of 38 case studies of reprisals in the context of development projects, shows that in all but two cases, the clients of development banks played a direct role in perpetrating attacks against human rights defenders and community members who speak out.²¹ Thus, solely entrusting clients with tackling retaliation is a clear case of letting the fox guard the henhouse.

For example, in the case of the Amulsar gold mine project in Armenia, the EBRD client filed more than 20 defamation lawsuits against activists, two media outlets, and even two members of the parliament. Some of these cases are still ongoing. The company's security personnel militarized the area and threatened people; an employee from the company was also involved in a sexist online attack and surveillance against a woman human rights defender.

In the case of the Indorama Agro cotton project in Uzbekistan, the company's workers faced intimidation, job loss threats, interference in the operation of the Trade Union, regular police and local authority calls warning to refrain from any engagement with international human rights CSOs, and travel restrictions.

In 2019, the EBRD approved a statement about “No Tolerance to Retaliations Against Civil Society and Project Stakeholders”, declaring zero tolerance. This should be better integrated in the ESP provisions to ensure the Bank's role in retaliation risk assessment and management as part of its ongoing due diligence, including a safe space for public consultations and effective response mechanisms in cases of reprisal. Moreover, the clause on the Bank's own public consultations activities to gauge stakeholder views needs clarification on the required condition to undertake such activity.

Monitoring. According to the current ESP, the EBRD monitors projects by reviewing the client's annual environmental and social reports on the project's performance, implementation of ESAPs and compliance of the client with Bank's standards. It may also periodically verify the monitoring information prepared by clients through site visits and third-party monitoring. However, these provisions lack information on whether and how the EBRD/consultants engage with affected rights-holders to obtain first-hand information and/or verify information from the client in order to ensure adequate evaluation of the project performance and required corrective measures and/or remedy.

Having clear guidance on how to safely and meaningfully engage with rightsholders during the EBRD's project monitoring will be beneficial. Bankwatch's experience in engaging with the EBRD during the project monitoring phase has revealed a lack of follow-up with rights-holders. For example, during the EBRD's monitoring visit to Uzbekistan in 2022 to inspect the problematic Indorama cotton project, the Bank's representatives did not manage to address retaliation risks which significantly limited their engagement with community representatives and workers.

²¹ Coalition for Human Rights in Development, [Misplaced trust – Why development banks should not rely on their clients to address reprisal risks](#), Coalition for Human Rights in Development, July 2023.

Additionally, improved transparency on the findings of EBRD monitoring reports and clients' annual environmental and social reports on the project performance would significantly contribute to enhancing stakeholder engagement and effective due diligence by the Bank.

Moreover, a grievance redress mechanism (GRM) should also be seen as an instrument to obtain information on project performance and underperformance, with consideration of its limitations. The EBRD should require an effective project-level GRM for every project and proactively distribute information about its Independent Project Accountability Mechanism in its countries of operation. In both direct financing and FI projects, EBRD should ensure that clients share information about the EBRD's involvement and IPAM both at the project site and in stakeholder consultations. For example, the African Development Bank requires²² the subprojects to “disclose AfDB’s support to them, the existence of the project-level Grievance Redress Mechanism (GRM), the Bank’s Independent Recourse Mechanism (IRM) and ensure that this information is clearly visible, accessible and understandable to affected communities.”

We recommend the EBRD to consider making the changes suggested below (marked in bold) to the following paragraphs in Section III (Scope) of the ESP:

*2.9. EBRD is committed to the principles of transparency, accountability and stakeholder engagement, and promoting adoption and implementation of these principles by its clients. EBRD requires its clients to comply with the applicable requirements of national law with respect to public information and consultation, identify stakeholders potentially affected by and/or interested in projects, and to develop and implement a grievance mechanism. Proportionate to the nature and scale and environmental and social risks and impacts of the project, EBRD requires its clients to disclose sufficient information about the risks and impacts arising from projects, engage with stakeholders in a meaningful, effective, inclusive and culturally appropriate manner and **integrate** the feedback provided through such engagement into **the final project design and risk and impacts management system**.*

*2.12. Through its technical cooperation and policy dialogue, EBRD will seek opportunities to build capacity to consider and manage environmental and social risks, impacts and opportunities in its countries of operation. EBRD will facilitate development of an enabling environment for its clients, **including a safe space for civil society**, to achieve environmentally and socially sustainable outcomes in their projects. **The EBRD will take responsibility for assessing and managing the risk of retaliation across its projects and operations in all its countries of operation.***

*4.5. Initial environmental and social examinations (IESEs) will be carried out where insufficient information is available at the time of categorisation to determine the appropriate category and scope of appraisal. **The EBRD will engage with rights-holders to source and verify information about the potential risks and impacts.***

*4.7. All projects undergo environmental and social appraisal both to help EBRD decide if the project should be financed and, if so, the way in which environmental and social risks and impacts should be addressed in **designing**, planning, implementing and operating a project. Whilst the exact scope of the appraisal will be determined on a case-by-case basis, it will be appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts. The appraisal will assess the environmental and social risks and impacts of the project and the capacity and commitment of the client to implement the project in accordance with the relevant PRs. **The appraisal will be done in a participatory manner and transparently by disclosing the EBRD’s due diligence findings and engaging with rights-holders to obtain and verify information.***

²² African Development Bank, [Integrated Safeguards System](#), Operational Safeguard 9, April 2023.

4.8. 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 client's information; (ii) **undertake additional gap analyses and due diligence based on publicly available sources, legal analyses, and input from rights-holders and public authorities; and (iii) decide whether the project can be undertaken in line with the Bank's policies. If these criteria are met, the Bank will** provide guidance to assist the client 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.

4.13. EBRD's appraisal requires clients to identify stakeholders potentially affected by and/ or interested in projects, disclose sufficient information about the risks and impacts arising from projects and engage with stakeholders in a meaningful and culturally appropriate manner. In particular, EBRD requires its clients to engage with people affected by projects and relevant stakeholders, in proportion to the potential impacts associated with the project and the level of stakeholder interest. For projects subject to ESIA that have the potential to have significant environmental impacts, such stakeholder engagement will be carried out bearing in mind the spirit and principles of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. For projects that have the potential to have significant environmental impacts across international boundaries, the Bank will encourage the approach of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context, regardless of geographical location of a project. **In projects with a high risk of retaliation, the Bank may, in some cases, will** conduct its own public consultation activities to gauge stakeholder views.

4.14. For FI projects, EBRD will conduct due diligence on the FI and its portfolio to assess: (i) the FI's existing environmental and social policies and procedures and its capacity to implement them; (ii) environmental and social risks and impacts associated with the FI's existing portfolio and expected future projects; and (iii) measures necessary to strengthen the FI's existing environmental and social management system. **The EBRD will source information from rights-holders as integral part of due diligence, including during site-visits to subprojects.**

4.18. EBRD will monitor and evaluate both directly financed and FI projects it finances against the objectives of this Policy throughout the time that the Bank has financial interest in the project. The extent of monitoring will be commensurate with the environmental and social risks associated with the project. EBRD reviews annual environmental and social reports on the environmental and social performance of the project, implementation of the ESAP and the compliance of the client with the environmental and social covenants in the financing agreements. If the client fails to comply with its social and environmental commitments, as set out in the financing agreements, EBRD may agree with the client remedial measures to be taken by the client to achieve compliance. In the event that the client fails to comply with the agreed remedial measures, the Bank may take such action and/or exercise such rights and/or remedies contained in the financing agreements that it deems appropriate. EBRD ~~will~~ **may also periodically** verify the monitoring information prepared by clients through site visits to projects by the Bank's environmental and social specialists and/or independent experts **and engagement with rights-holders**. In cases where legal proceedings are pending with the client, the Bank's ability to monitor may be restricted.

4. Monitoring and reporting on environmental, social and human rights projects underperformance

The EBRD's annual Sustainability, IPAM and Office of the Chief Compliance Officer (OCCO) Reports provide minimal and general information on the environmental and social performance of its projects, paying no attention to human rights

violations²³ and their evolution over time. Although the EBRD's recent Evaluation Department (EvD) Energy Reports and Cluster Evaluations provide an overview of performance results, there is little focus on environmental and social indicators. Notably, the pilot-country evaluation report for Uzbekistan underlines the project-related challenges, such as lack of meaningful stakeholder engagement due to restricted civic space.

Similarly, in 2019-2022, the OCCO reported receiving six complaints from individuals and civil society organisations, alleging that they were 'subject to retaliation by Bank clients following complaints made about an EBRD project'.²⁴ The OCCO committed to monitoring further actions, but no information on response actions taken by the EBRD was disclosed. In addition, some environmental, social and human rights concerns and incidents are reported to the Environmental and Social Department (or their project teams), country offices and IPAM. To our knowledge, the EBRD has no register of such incidents in place.

Bankwatch enquired to the EBRD about the specific challenges faced by projects, as documented in client reports and EBRD monitoring visits, but did not receive a substantial response. This raises questions about whether an effective monitoring system exists, and how the EBRD verifies its approach to environmental and social due diligence to ensure institutional learning. More transparency on environmental, social and human rights projects' underperformance may benefit the Bank's institutional development and overall due diligence by opening the space for meaningful feedback from stakeholders and learning.

We recommend the EBRD to consider making the following changes (marked in bold) to Section III (Scope) of the ESP:

*5.1. EBRD is committed to the principles of transparency, accountability and stakeholder engagement. It will publish an annual sustainability report that provides information on the environmental and social **aspects performance** of its investment activities and its own operations, **including underperformance issues and timebound measures for its resolution**, and on the implementation of this Policy, **including instances of non-compliance identified and timebound measures to rectify them**. EBRD will engage in meaningful dialogue with the relevant Bank's stakeholders, in accordance with the EBRD Directive on Access to Information (DAI). The Bank will promote similar good practices amongst its clients.*

*5.2. EBRD will summarise environmental and social risks and impacts relating to projects **and proposed mitigation measures** in Project Summary Documents in accordance with the provisions of the Bank's DAI. **The EBRD will publish annual environmental and social project monitoring reports as part of its Project Summary Documents.***

Switching to the DAI, the EBRD should also consider making the following changes (marked in bold) to Section IV (Scope):

1.1.3 The following corporate reports are disclosed annually:

*i. Annual Review on the impact of the Bank's Operations and Activities during each year including highlights of innovation in key sectors and initiatives, **impacts of policy dialogue, and institutional learnings from these Operations and Activities.***

²³ CEE Bankwatch Network, [The forgotten annex in the EBRD Sustainability Report 2022: human rights](#), CEE Bankwatch Network, 9 June 2023.

²⁴ Office of the Chief Compliance Officer, [Integrity and Anti-Corruption Report 2022](#), European Bank for Reconstruction and Development, 22 April 2023.

iii. Sustainability Report which includes information on the environmental and social ~~aspects of the Bank's Operations and Activities~~ performance of the Bank's investment activities and internal operations, including the challenges involved, implementation of ~~the Environmental and Social~~ this Policy, including cases of non-compliance. The Sustainability Report also includes climate finance data with a breakdown by country, sector and Project, the total amount of the EBRD finance for each Project, the proportion of such amount earmarked as climate finance for each Project and whether such climate finance is earmarked under mitigation or adaption sectors.

1.1.4. The following compliance reports and documents are disclosed as noted below:

i. Integrity and Anti-Corruption Report, published annually, describing, among other things, the Bank's strategy to promote integrity and prevent fraud, corruption, **retaliation**, and the actions taken during the reporting period to ensure that the Bank has conducted its business activities with integrity, including handling of allegations of fraud and corruption in connection with the Bank's activities **and the effective resolution of cases of retaliation**.³⁰

Signed,

CEE Bankwatch Network

Accountability Counsel

Counter Balance

Defenders in Development campaign

FIDH / International Federation for Human Rights

MenaFem Movement for Economic, Development and Ecological Justice

Recourse