

Bank Information Center Comments on the EBRD's Public Information Policy Review January 8, 2003

On 23 October, 2002, the European Bank for Reconstruction and Development (EBRD) released a Public Information Policy Review (the Review) for external comment. Please accept this document as our submission to the consultative process. We thank you for this opportunity and look forward to seeing these points reflected and responded to in the Bank's feedback on the Public Information Policy consultation.

The second paragraph of the Review states that an important element of the review was "benchmarking with other IFIs, in particular the World Bank and the International Finance Corporation." We agree that, at the very least, the EBRD should use the Review as an opportunity to bring their standards in line with those of the World Bank Group. Hence, we were disappointed to see that the entire Review consists of only two recommendations even though the EBRD's public information policy fails to meet the minimum mandatory disclosure requirements of World Bank Group and other MDBs in a wide range of ways. We would also note that although the World Bank Group has made significant progress in increasing its transparency, we believe that the standards still need to be greatly improved. Being far less transparent than the World Bank Group, the EBRD has a significant distance to travel if it is to bring its policy in line with its stated commitment to participatory decision-making and a respect for the rights of project affected peoples.

We are happy to see the pilot project for releasing Country Strategies in national languages and the EBRD's stated interest in consulting with stakeholders early in the preparation of the Country Strategy. However, the limited nature of the Review leads us to question the process by which it was undertaken as well as the EBRD's overall commitment to transparency. Our comments, therefore, concern the entire Public Information Policy (PIP) as a whole, not just the Review.

The following comments are divided into three sections. The first details the many specific ways in which the current EBRD Public Information Policy falls short of the standards of the World Bank Group (IDA/IBRD and IFC) and/or the Asian Development Bank (ADB). The EBRD should view these as minimum mandatory standards to be met. The second section below outlines the goals the EBRD should be striving for, above and beyond the level of other IFIs. The third section offers suggestions on how the EBRD might encourage innovation to become a leader in transparency.

1. Areas in which the EBRD's information policy fails to meet the minimum mandatory standards of other MDBs:

Environmental Documents

- 1.1. While we support the EBRD's 120-day standard for the disclosure of public sector "Category A" *Environmental Impact Assessments* (EIAs), the EBRD does not commit itself to making these EIAs available prior to project appraisal. Such a commitment would be consistent with World Bank and ADB policy and would help to ensure that EBRD project appraisal does not proceed until after an EIA has been completed and released. In addition, there is no reason why EIAs for private sector projects can not also be released for a minimum of 120 days. The ADB's "120 day rule" requires that the Summary Environmental Impact Assessment, or in "relevant cases the Summary Initial Environmental Examination, is made available to the general public at least 120

days before Board consideration of the loan, or in relevant cases, before approval of significant changes in project scope” (pp. 21, para. 64, Environment Policy, November 2002). These documents must be made available both in the ADB’s depository libraries and on its website. The full Environmental Impact Assessment and the Initial Environmental Examination are available to the public on request. This rule applies to all public and private sector Category A projects and selected Category B projects. The rights of local stakeholders to reflect on the environmental and social consequences of a publicly financed project should not vary depending on whether the implementing agency is a public or private institution. Maintaining two standards for disclosure suggests that due diligence is being sacrificed in the interest of private sector expediency. This is a dangerous and unnecessary trade-off and the EBRD should increase the minimum disclosure period to 120 days for private sector Category A lending and make all EIAs available prior to project appraisal.

- 1.2. The IFC’s amended Disclosure Policy removes the previous waiver authority under which the Vice-President of Investment Operations could waive the disclosure period requirement for the disclosure of “Category A” *Environmental Assessments* (point 5, IFC Disclosure Policy). Conversely, the disclosure requirements for private sector “Category A” Environmental Impact Assessments can still be waived under the EBRD’s policy. The ability of project-affected people to comment on an EIA should not be subject to EBRD discretion and this waiver authority should be eliminated.
- 1.3. The World Bank now discloses full *Environmental Assessments* for Category “B” projects. The IFC commits itself to certain minimum standards related to the accessibility, distribution and translation of environment information for “Category B” projects. The IFC disclosure policy states: “Since project affected people may not have reasonable access to a World Bank or IFC office, the sponsor is also required to release locally the *Environmental Review Summaries* (conducted for Category “B” projects), any amendments, and the results of any consultations required by IFC, translated into the local language, in a culturally appropriate manner to facilitate awareness by relevant stakeholders that information is in the public domain for review” (IFC Disclosure Policy). The ADB also has a requirement for some category B projects. The EBRD, however, does not currently require the release of the *Environmental Analyses* or any Category “B” project environmental documents. The EBRD should be expected to meet this minimum standard for all of its projects

Project Related Information

- 1.4. The IFC discloses a *Summary of Project Information* for ALL projects. The comparable document at the EBRD, the *Project Summary Document (PSD)*, is disclosed "unless the EBRD's client or co-financing institution provides sound reasons for confidentiality." These exceptions would deny even a minimum of transparency in some EBRD operations and should, therefore, be removed. The EBRD should commit itself to making Project Summary Documents available in all cases.
- 1.5. The World Bank will now include a list of *factual and technical documents* in *Project Information Documents*. The EBRD should make a comparable commitment for its PSDs.
- 1.6. The World Bank recently committed itself to releasing evaluation materials related to lending operations. Specifically, the World Bank will disclose all *Implementation Completion Reports* and *Project Performance Audit Reports* following project completion. The ADB also releases its *Project Completion Reports*. The EBRD should release comparable information.

- 1.7. The World Bank now discloses an *Integrated Safeguards Data Sheet* during project preparation. This is an important effort to promote greater policy compliance and the EBRD should take similar action.
- 1.8. *Loan and Credit Agreements* for World Bank projects and sector loans are made available. The EBRD should not only follow this lead, but also make these kinds of documents available on its website.

Information Not Related to Specific Projects

- 1.9. The World Bank prepares a *Monthly Operations Summary* which “reports on the status of each lending operation under preparation for Bank financing- from its inception and identification through the signing of the relevant agreements with the Bank” (para.17, WB Disclosure Policy). This early information should be made available for EBRD public sector loans.
- 1.10. For its prospective lending operations, both public and private, the Asian Development Bank publishes a monthly *Business Opportunities listing*, which provides information on “new projects in the pipeline, procurement opportunities, recruitment of consultants, pre-qualified contractors, and contract awards” (pp. 13, ADB Policy on Confidentiality and Disclosure of Information). The EBRD should make the same kind of information available about its own lending operations.
- 1.11. The World Bank discloses its *Status of IDA/IBRD Projects in Execution*. This report contains information on all public sector lending operations under implementation, including any significant changes in the project (para. 26 of the WB’s Information Disclosure Policy). The EBRD should release comparable information.
- 1.12. The absence of any commitments to releasing *non-project specific evaluation material* is striking, given the progress that the World Bank and IFC have made in this area. Without going into specifics on the variety of evaluation material that the World Bank and IFC have committed themselves to providing, we would strongly encourage the EBRD to follow suit. We would encourage the EBRD to examine sections 47-51 of the World Bank’s Information Disclosure Policy and the IFC’s Operations Evaluation Group Findings in the IFC’s Information Disclosure Policy in order to better understand where the EBRD policy falls short in this matter.
- 1.13. The EBRD’s policy is silent on issues related to the disclosure of what the World Bank calls *economic and sector work*, or “ESW”. The World Bank undertakes economic and sector work which, among other things, “provides the basis for the Bank’s diagnosis of a given country’s development prospects.” We refer you to paragraph five and six of the World Bank’s Information Disclosure Policy, where it states that “reports emanating from ESW that are distributed to the Executive Directors for information are publicly available after such distribution,” and that the other ESW reports may be made publicly available after consultation with the country concerned. We assume that the EBRD prepares similar diagnostics and should release this kind of information for public consultation.
- 1.14. The World Bank now discloses its biannual *Executive Directors’ Work Program Overview*. Similarly, the *Monthly Update of the Board’s Schedule* “containing matters that are planned for consideration by the Executive Directors” is also now disclosed. The EBRD has not taken comparable measures.

- 1.15. Decisions of the World Bank Board of Directors related to selected policies, strategies, and topical issues are “announced through *press releases* or press conferences with Senior Bank officials.” *Chairman’s Concluding Remarks* and “*Summings-up*” on discussions related to Country Assistance Strategies, Policies and topical issues are now disclosed “if the Executive Directors so decide” (paragraph 66 of the World Bank Information Disclosure Policy). The EBRD should meet these minimum standards.
- 1.16. The World Bank has articulated a policy on the disclosure of *archived documents* (see paragraphs 77-81 of the World Bank’s Information Disclosure Policy). The EBRD’s policy remains silent on this issue.
- 1.17. It appears that the EBRD does not have a *Resettlement Policy*. The World Bank has committed itself to making Resettlement Action Plans as free-standing documents in all cases where such plans are prepared. This will improve the transparency of Bank practice by helping interested parties identify the specific material they are seeking. The EBRD should be held to a similar standard.

2. Recommended Ways in which the EBRD should Increase its Transparency Beyond the other MDBs

Environmental Documents

- 2.1. In addition to Environmental Impact Assessments (EIAs) and Environmental Analyses for both public and private sector projects being released 120 days prior to Board review, documents such as *Oil Spill Response Plans* and other *emergency response plans* should be included in EIAs and environmental analyses and should remain available throughout the life of the project. This information is crucial to determining the impact of a project on affected communities and the environment.
- 2.2. The Bank should ensure that all EIAs, are translated into the national language(s) of the borrowing country. The existing policy of not requiring these documents to be available in languages other than English is sometimes tantamount to denying people access to the information itself.
- 2.3. The *Environmental Review Memorandum* as well as the environmental section of the *Final Review Memorandum* should be publicly available prior to Board approval.

Project Related Information

- 2.4. *Project Summary Documents* (PSDs) for public sector projects have a minimum disclosure period of 60 days whereas private sector PSDs only need be disclosed for 30 days. Both public and private sector PSDs should be released immediately after Initial Review but no less than 60 days prior to Board review. In addition, the policy should develop specific language that will hold the Bank accountable for ensuring that PSDs are proactively disseminated, in relevant languages and in a culturally appropriate way amongst project affected peoples.

- 2.5. The policy should commit the Bank to making a ***complete list of approved projects*** available on the web as soon as they are approved. Furthermore, project affected peoples should be notified, in a culturally appropriate way, of a given project's approval.
- 2.6. Public sector Board Reports are currently released after Board approval. Following an appropriate formula for removing limited business confidential information, we feel that ***Board reports for private sector projects*** should also be open to public scrutiny. As a public institution the EBRD has the responsibility to operate in the public domain. In addition, all Board Reports should be made available to the public at the same time they are sent to the Board for approval.
- 2.7. The policy is silent on the unique transparency questions associated with ***Financial Intermediary Loans***. Specific commitments should be made that will ensure transparent reporting on the nature of financial intermediary and other on-lending activities. The Bank should also commit to engaging in a separate review on how to ensure transparency in the final destination of resources within the context of Financial Intermediary Loans.
- 2.8. In addition to the documents the World Bank now makes available, the EBRD should also disclose ***mission reports, supervision reports, Mid-term Project evaluations*** and other ***information about project implementation***. Social and environmental monitoring reports that are periodically prepared for private sector projects are obviously relevant to the health and safety of affected communities and ecosystems. They also represent a means by which actors can monitor the degree to which minimum standards and safety precautions outlined in an EIA or environmental analysis are being pursued within a given project. This is fundamental to transparency within EBRD supported operations since it allows affected communities to hold the EBRD and private sector actors accountable for the commitments they make during project design.

Information Not Related to Specific Projects

- 2.9. Country Strategies:
 - The current Review proposes that a “Management note” will be made available prior to an eight week comment period. If the Bank hopes to develop credible consultative processes during Country Strategy preparation a "***Draft Country Strategy***" must be made available.
 - The ***final Country Strategy*** should be made public at the same time that it is distributed to the Board of Directors for consideration and eventual approval. The ***Addendum*** summarizing the public comments received and the team’s responses to such comments should be made public at the same time they are provided to the Executive Committee and Directors. If comments were not incorporated into the Country Strategy, the team’s response should include an explanation of why the comments were discounted.
 - All Country Strategies without exception must be made public following approval.
 - All of the above documents should be released in the national language of the borrowing country.
- 2.10. In addition to releasing the Chariman’s Concluding Remarks on a Board policy discussion as the World Bank now does, the ***final draft of all sectoral policies*** should also be made available to the public at the same time it is made available to the Board. The Summary of Comments and Staff Response should be disclosed to the public before the approval of the sectoral policies by the Board.

- 2.11. The *Environmental Procedures* as well as the *list of documents* that should be available to the public according to the Public Information Policy, should be available in national languages.
- 2.12. The current proposal for an independent review mechanism (IRM) lack any clear benchmarks or standards to ensure sufficient transparency and information disclosure. All *assessments, reports and recommendations* should be made available to the claimant and to the public. Additional comments on the IRM proposal will be submitted separately.

Transparency of the Board of Directors

- 2.13. Governance of the EBRD should not be held to a lower standard of transparency than parliamentary deliberations or sessions of the US Congress. Citizens should have the right to full information on the way in which they are represented in the Bank's Board. Anything less will ultimately leave the Board in the contradictory situation where it finds itself today: promoting good governance in borrowing countries but deliberating in almost total secrecy. Board sessions should be a matter of public record, if not open to the public itself (perhaps by closed circuit television). In exceptional circumstances closed sessions could be conducted upon request and with adequate justification. Similarly, personnel and other internal matters could be debated in closed sessions. As a minimum step, following Board consideration, *minutes and summaries of the Board discussion* related to a given loan should be disclosed.

Monitoring and Implementation of the Information Disclosure Policy

The Bank has no way of systematically monitoring the implementation of its Information Disclosure Policy (with the exception of requests directed to the EBRD's Bank Information Center). The Bank simply does not know how staff tend to respond to information requests that are sent to project staff rather than the EBRD's Information Center. It is unclear how Bank staff that fail to respond to information requests are disciplined. Furthermore, there is no appeals mechanism for stakeholders that feel they have been improperly denied information that should be publicly available. Governments rely on judicial systems and/or an "Information Ombudsman" to ensure that civil servants can be held accountable for failure to abide by governmental disclosure policies. The Bank currently offers neither judicial recourse nor an appeals mechanism. This, combined with the Bank's current lack of monitoring of how requests are responded to, leads to an atmosphere where some Bank staff abuse their discretion and are not held accountable for such abuse.

- 2.14. The Review should recommend an appeals mechanism for stakeholders that feel they have been wrongly refused information. This could take the form of an "Oversight Panel" or an independent "Ombudsman". This would be an important indication that the Bank is serious about holding staff accountable for the implementation of the Policy. Precautions should be taken to ensure that persons serving on such appeals mechanisms have the independence and authority that they need to fulfill their function without undue influence by Bank Management or the Board. The Bank could also refer to the American Bar Association's "essential characteristics" of an independent ombudsman for further guidance on this matter.
- 2.15. The Review should also recommend the development of other process guarantees. As previously argued by the NGO "Article 19" during the World Bank Disclosure Policy Review, this should include "requirements of timely decision-making and that refusals be accompanied by substantive written reasons." The EBRD could refer to the "Code of Good Administrative Behaviour of EIB staff in its relations with the public" for ideas on such process guarantees. The

European Investment Bank, which in almost all respects is behind the World Bank in terms of transparency, provides (in Article 12 and 13 of the Code) a commitment to minimum process guarantees.

2.16. The Bank should also make specific reference to the need for annual audits of the policy.

3. Suggestions for how the EBRD should Encourage Innovation

The quality of the EBRD's interaction with affected communities and interested organizations depends in part on the degree to which staff seek out ways to enhance stakeholder participation in the design, implementation and evaluation of projects. Proactive and dedicated staff can greatly enrich the quality of public consultations and help to develop trust between the EBRD, project sponsors and affected communities. Towards this end, the EBRD should encourage its staff to identify opportunities to disclose additional information and disseminate existing information in a more effective and culturally appropriate manner.

For instance, the World Bank's "Pilot Activities in Information Disclosure" are designed to increase the "number and type of documents that are made publicly available" and to better disseminate information to "target audiences, especially those affected by Bank operations." These Pilot Activities, under implementation in roughly 20 countries, encourage country teams to "test ways for the World Bank and governments to provide additional information on [country strategies] and lending operations under preparation and implementation, as a basis for improved development effectiveness." This sends a message to country teams that the World Bank values greater transparency and encourages its staff to experiment with practical ways to improve disclosure. (See: <http://www1.worldbank.org/operations/disclosure/disclo-pilots.html>)

World Bank operations are still characterized by unnecessary secrecy and untimely disclosure, but the institution is at the very least actively experimenting with innovative approaches to greater transparency. An EBRD Pilot program, focusing on disclosing additional information in certain countries, would send an important signal that the EBRD is also actively seeking ways to disclose additional information in the interest of stakeholder participation.

We thank you again for this opportunity to comment on the EBRD's Public Information Policy Review and look forward to seeing these points reflected and responded to in the Bank's feedback on the Public Information Policy consultation.

These comments were prepared by Graham Saul, Karen Decker, Abigail Parish and Khadija Zaheer.

The Bank Information Center (BIC) is an independent non-profit, non-governmental organization that provides information and strategic support to NGOs and social movements throughout the world on the projects, policies and practices of the Multilateral Development Banks (MDBs). BIC advocates for greater transparency, accountability and citizen participation at the MDBs. BIC is supported by private foundations and organizations that work in the fields of environment and development, and is not affiliated with any of the MDBs.

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