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Bankwatch comments on the EBRD Public Information Policy Review 2002

November 2002

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Respect for the communities and the environment affected by projects are part of the corporate governance of every EBRD transaction, on a par with sound banking, high international standards to guarantee shareholder rights, transparency, accounting practices and integrity.

Jean Lemierre, President of the EBRD
at Plenary Session of World Summit
on Sustainable Development,
Johannesburg, South Africa, September 2002

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Introduction

After reading this document some readers may have a feeling of “deja vu”. Indeed, we already raised most of these comments in our February 2002 paper “Bankwatch suggestions for improvement of the EBRD Public Information Policy”, and they have also appeared in other documents prepared by various NGOs. When Bankwatch was preparing its suggestions back in February 2002, we had hoped to stimulate debate with EBRD staff in order to raise the EBRD’s policy to the level of good practices and standards used in shareholder countries and other international financial institutions.

Not only did the EBRD staff fail to include any of the NGOs’ recommendations into its Public Information Policy, but it failed to address these issues in its Policy Review at all. For those East European NGOs that invested their time and resources into the consultation process, this raises the question whether the EBRD was really serious about public input.

Where Bankwatch sees progress

The Public Information Policy Review recommends that Country Strategies be translated into national languages for a one-year trial period. The Environmental Policy Review also calls for making EIA documents available in the language which is “accessible to the majority of people affected by the project”.

Bankwatch appreciates the recognition of the fact that proper public involvement is impossible if people cannot read the documents. Furthermore, the Public Information Policy Review shows that the vast majority of countries define an official language in their constitutions, so releasing documents in the appropriate languages would in most cases bring the EBRD in line with the legal requirements of the respective countries.

Another area where progress was made was the setting up of an Independent Recourse Mechanism that can be used to ensure that the EBRD staff of project sponsors do not ignore the existing Information and Environmental Policies.

What still needs to be improved?

NGOs are disappointed that this review ignored the issues discussed in the 2001 review, especially the release of Project Summary documents and making EIA documents available on the internet.

For NGOs and potentially affected communities, information related to individual projects is crucial. Our comments list a number of areas where the current Public Information Policy does not reflect local needs, but these areas were ignored in the 2002 Policy Review.

The policy needs improvement in the following areas:

- project sponsors should release Environmental Analyses for Category B projects
- project sponsors should make Environmental Impact Assessments and Environmental Analyses available on the internet,
- release of all Project Summary Documents (PSDs) with no exception,
- equalisation of the periods for releasing information for public and private sector projects - for both Environmental Impact Assessments as well as Project Summary Documents,

- release of oil spill and other emergency response plans as part of the EIA,
- inclusion of a list of factual and technical documents in the PSDs,
- release of the environmental section of the Final Review Memorandum or Environmental Review Memorandum as part of PSDs,
- availability of project implementation documents.

Other steps that would increase the general transparency of the EBRD as a publicly funded institution:

- Environmental Procedures, Public Information Policy and Independent Recourse Mechanism documents should be available in the official language of the countries of operation.
- release of Expanded Annual Monitoring Reports, Operation Performance Evaluation Report and other evaluation documents,
- clarification of procedures for the release of information, including the possibility of an independent review of refusals,
- earlier release of the Staff response to comments on the policies,
- updates on the Board's planning activities.

Another step we would like to see is the release of Board Minutes and especially the Record of Vote of the Board. Although for procedural reasons this cannot be done within the framework of the Public Information Policy Review, the release of minutes is a question of public access to information, and so we feel it proper to raise the issue here.

Project-related information

Our suggestions regarding project-related information are based on the following principles, which we believe that the EBRD should also follow:

- People and communities affected by a project have a fundamental right to be informed about, and to participate in, decisions that affect their lives.
- In order for people to participate in project and policy design and implementation, they require information during the deliberation process, and not after decisions have already been made.
- The timely disclosure of information will help the EBRD to capture a broader range of input and, by extension, improve the design of projects and policies by allowing stakeholders to draw the EBRD's attention to possible false assumptions and unintended impacts.
- Providing information during loan implementation will improve the monitoring of project performance.
- Transparency in resource allocation will deter corruption and support those in borrowing countries who are attempting to improve governance and the efficient allocation of resources.

Release of Environmental Analyses

The release of Environmental Analysis documents is one of the issues that staff failed to include in the collection of Public Comments on PIP and Staff Responses, and which later was not included in the Policy.

Bankwatch and other NGOs argued that Environmental Analyses for category "B" projects should be publicly available for at least 60 days before Board approval, both in public and private sector projects. The Environmental procedures state that the Environmental Analysis "is carried out on operations or activities where any future environmental impacts are potentially significant." Those environmental impacts should be disclosed to the public, including proposed mitigation measures.

Other IFIs are already releasing Environmental Analyses. The Asian Development Bank requires the release of environmental documents for category B projects¹. Also, in the latest revision of the World Bank Information Policy, the Bank decided to disclose documents for Category B projects in the country and at the Bank's InfoShop².

Environmental Analyses should be available for viewing at the Bank's Business Information Centre in London, and also be posted in a timely manner on the EBRD website (or, alternatively, the EBRD website should provide a link to the website where the EA can be found). A copy of the EA and the Executive Summary should also be made available at the EBRD Resident Office in the country of the project's location.

Bankwatch proposal: The Environmental Analyses for category "B" projects should be publicly available for a period of 60 days before Board Approval of the project.

¹ ADB Environmental Policy, November 2002

² World Bank Policy on Disclosure of Information, June 2002

Oil Spill and Response Plans

When Bankwatch and other NGOs requested a release of the Oil Spill Response Plan and other emergency response plans as part of the EIA, staff responded quite positively: “The EBRD recognises the importance and interest of the public, particularly those living near a facility, in wanting assurances on the safety and security of the operations, including transport of materials and waste to and from the facility.” But neither the current version of the Public Information Policy nor the draft of the Environment Policy contains adequate provisions requiring the release of emergency plans by the project sponsor.

The bitter experience with projects such as the Kumtor Gold mine (Kyrgyzstan) illustrates the importance of the availability of such emergency plans to the public. It is evident that better information and more effective communication among companies, government (local and national) and citizens would reduce the health, social, environmental and economic impacts of such accidents.

Bankwatch understands some of the concerns about the sensitive information that could be part of these documents. Citizens who may be affected by a project are not interested in sensitive information, but only in issues such as early warning systems, evacuation plans, health protection and similar questions.

A number of examples already exist of how such documents could be released - it is only a matter of organising the documents in a way that the sensitive information can be easily removed.

Bankwatch proposal: The EBRD should require the release of emergency and oil spill response plans as part of EIA documentation.

Release of Environmental Impact Assessments on the internet

The EBRD staff’s response to NGO comments stated that it was possible to create a link to the sponsors’ websites and that they “strongly encourage sponsors to put EIAs on their websites.” Current Public Information Policy Review ignores the review of the EIA release, despite the fact that the 2001 Review found that (in spite of the recommendations of its staff) none of the seven EIAs was put on the internet. The EBRD website shows three EIA Executive Summaries for 2001 and provides only one full EIA. In 2002 there were seven EIA summaries and again only one full EIA.

It is obvious that the “encourage” approach does not work. One of the reasons given in the 2001 Review was that “the project sponsors did not have websites and did not want to establish one for this limited purpose.” We fully understand that smaller companies do not want to go through the work of setting up an internet site for the sole purpose of public consultation on one project, but sponsors who do have existing websites can make no such argument. Further, the EBRD has already demonstrated that it is able to release Executive Summaries of EIAs on www.ebrd.com and there should therefore be no obstacles, technical or otherwise, to releasing the EIA documents.

Bankwatch proposal: The EBRD should either require the release of the full EIA on the project sponsor’s website or, if the project sponsor does not have a website, release the EIA on www.ebrd.com.

Release of the Environmental Impact Assessment

We strongly suggest that the EIA be released 120 days before Board approval, no matter what type of project, public or private. The Asian Development Bank’s new environmental policy adopted in November 2002 does not make any distinction between the release of EIAs for public and private sector projects:

“The 120-day rule applies to all public and private sector category A and selected category B projects deemed to be environmentally sensitive.”

In its 2000 response to public comments, EBRD staff did not give any arguments demonstrating a need for different consultation periods for private and public sector projects. The 2001 Review of the Implementation of the Information Policy shows that of the seven projects started in 2000, only one would not have complied with the 120-day period.

As a final point, if a project affects the environment, it makes no difference whether the project is private or public.

Bankwatch proposal: The EBRD should remove the irrational differentiation between public and private sector projects and make EIAs for all project available to the public for a period of 120 days before Board approval.

Release of Project Summary Documents

The current Public Information Policy Review failed to assess the Public Information Policy’s performance regarding the release of Project Summary Documents. This omission occurred despite the fact that the 2001 review showed that the EBRD staff failed to implement EBRD policy. According to the 2001 Policy Review, 30 out of 73 private sector projects and four out of 28 public sector projects did not comply with procedures for releasing Project Summary Documents. Another 22 private-sector Project Summary Documents were not released because of confidentiality reasons.

We believe that the EBRD policy should be modelled after World Bank and IFC procedures. The IFC (the private sector arm of the World Bank) policy regarding the Summary of Project Information (the equivalent of the EBRD’s Project Summary Document) states: “The SPI is designed to make project information available to interested parties prior to a project’s consideration by the Board of Directors, but only after IFC Management has determined that the project is likely to be presented to the Board for consideration and the project sponsors have cleared the content of the SPI to verify its factual accuracy and to ensure that it does not inadvertently contain business sensitive confidential information.”

The EBRD’s provision for confidentiality of Project Summary Documents is not necessary. The example of the IFC, which operates in more countries than the EBRD, shows that the confidentiality clause is not necessary and should be removed from the policy.

One more issue is the current differentiation between private and public sector projects. For the same reasons that the time period for the EIA review should be the same, the release of Project Summary Documents should be the same for private and public sector projects.

Bankwatch proposal: The EBRD should release both public and private PSDs at least 60 days prior to Board approval without any exception.

List of factual and technical documents related to project preparation

The EBRD should include in the Project Summary Document a list of factual and technical documents that were prepared during project preparation. This would follow World Bank practices.

If the EBRD is to be serious about consulting affected communities and providing people the opportunity to participate in decision-making, then it must provide information at a point in the process when decisions are still being made. By allowing people to know what information does and does not exist on a given

project, the EBRD puts affected communities in a better position to know what information they should be asking for. Currently, people don't ask for relevant documents or information because they aren't even allowed to know that they exist.

Bankwatch Proposal: The EBRD should include in the Project Summary Document a list of factual and technical documents that were prepared during project preparation.

The environmental section of the Final Review Memorandum, Environmental Review Memorandum

In its 2000 staff response, the EBRD argued against releasing the environmental section of the Final Review Memorandum: "A summary of environmental issues, and associated mitigation measures, is included in the environmental sections of Project Summary Documents. These documents for private sector projects are released at the same time in the Final Review."

The Environmental Review Memorandum, as well as the environmental section of the Final Review Memorandum, provides information that is of high public interest - the Bank's view regarding the results of the EIA, audit or other environmental investigation into issues such as environmental/health and safety issues and their mitigation, and, additionally, the status of the Environmental Action Plan or the status of public consultations.

The Project Summary Documents contain this information in a different form and scope. As we understand it, the document is more brief than the documents above. As information relating to the environmental, social or health impacts of the project is of major public concern, the release of the environmental section of the Final Review Memorandum or Environmental Review Memorandum would greatly improve the public's awareness of a given project.

Bankwatch proposal: The environmental section of the Final Review Memorandum or Environmental Review Memorandum should be publicly available prior to Board approval.

Information about project implementation

Generally, information about project implementation and operation is not available to the public unless the project sponsors are willing to release such information or are required to do so by national legislation. EBRD staff have a very limited amount of time for monitoring the implementation of a loan, and increased disclosure would allow stakeholders to warn the EBRD when actual impacts differ from projected impacts.

Bankwatch proposal: Information about project implementation, environmental, health and social impacts, and proposed mitigation plans should be made publicly available on a regular basis.

Information not related to specific projects

Environmental Procedures and list of available public documents

Several projects in which the EBRD has been involved over the last couple of years (e.g. Frontera Resources, Thessaloniki–Skopje pipeline) have shown misunderstandings among the various stakeholders about the environmental procedures that apply to the project. We believe that such misunderstandings come from the simple fact that the Environmental Policy and Procedures are not available in local languages and are not actively distributed to the interested parties.

The current policy review proposes translating the Country Strategies. We believe that an even more important part of any pilot translation program would be the translation of documents related to the EBRD's Environmental Policy, Information Policy and Independent Recourse Mechanism. These are essential for any meaningful public participation.

Bankwatch proposal: the Environmental Policy, Public Information Policy and Independent Recourse Mechanism document should be available in the official language of the countries of operation.

Evaluation Documents

The EBRD should disclose Evaluation Documents such as Expanded Annual Monitoring Reports or Operation Performance Evaluation Reports, especially the sections which refer to progress (or the lack thereof) in meeting agreed environmental and social provisions, conditions and targets.

We believe that the release of Evaluation Reports would be one of the most important steps towards increasing the transparency of projects financed by the EBRD. Other MDBs are doing much more to inform the public about their own performance. Even the EIB, an institution which has become famous for its low degree of transparency, releases its Evaluation Reports on the internet. Also, the World Bank's new policy will result in a substantial increase in the disclosure of documents related to project evaluations and other evaluation material (including Implementation Completion Reports and Performance Assessment Reports, which are evaluations conducted at the end of a project to assess its impact, as well as the Annual Report on Portfolio Performance).

Citizens in the EBRD's shareholding countries should have an opportunity to see how the EBRD uses the funding that originally comes from taxpayers, whether the projects meet the bank's objectives and whether the projects cause any social or environmental problems.

Bankwatch Proposal: The EBRD should disclose various Evaluation Documents.

Independent Review of refusal to disclose information.

The right to access information cannot be guaranteed unless stakeholders have a right to appeal, to an independent body, any denial of information disclosure. Such right of appeal is crucial to the success of any disclosure system because in the absence of a review body, there is no independent check on whether a refusal is in accordance with the Public Information Policy.

Such a process is recognised in the national access-to-information legislation of most EBRD shareholding countries. These laws provide for appeal to an independent administrative body and/or the courts. One example: this principle is practised by the UNDP in its Public Information Disclosure Policy, which provides for the establishment of an Oversight Panel for appeals.

The independent review of any denial of information disclosure should be clarified both in the Information Disclosure Policy as well as in the newly set up Independent Recourse Mechanism, which would be the logical body for an independent review.

Bankwatch Proposal: The EBRD should set up procedures allowing for an independent review of any refusal to disclose information.

Timelines for disclosure of information and reasons for refusal

In our experience, the EBRD usually reacts to requests for information within a reasonable time. Nevertheless, a clear timeline for responding to such requests would reduce public confusion in the countries of operation. We also believe that written reasons should be given anytime the EBRD declines to make information public. This is not only necessary for appeal, but also because those who make the request have a right to know why their request has been refused. Such procedures are the usual practice in most of the shareholding countries, which have laws regarding access to information.

Bankwatch Proposal: The EBRD should set a timeline for responding to requests for disclosure of information, and set up procedures for making any refusals in writing, including giving reasons for the refusal.

Staff response to the comments on policies

The Summary of Comments and the staff's response to stakeholders' comments on the draft policies should be released prior to the board's consideration of the policy. The consultations for the Public Information Policy demonstrate the need for such a provision. Several comments to the Public Information Policy made by NGOs were omitted both in the policy as well as in the 2000 Summary of Comments and Staff Response. The same procedure should apply to the newly proposed consultation on the Country Strategy.

Bankwatch Proposal: The Summary of Public Comments and Staff Response should be disclosed to the public before the Board's approval of the sectoral policies and Country Strategies.

Update of the Board Schedules

The World Bank Board, in a recent revision of its policy, decided to release monthly updates of the Board schedule. We believe that the release of the EBRD Board schedule and its agenda would help to increase the transparency of the decision making process.

Another step towards increased transparency made by the World Bank is the release of its half-year plan. We note that the EBRD has already started to move in a similar direction by releasing the dates for projected Board consideration of Country Strategies. We suggest that a similar approach be taken in regard to sectoral policies and other important documents, and a half-year plan be released regarding their consideration.

Bankwatch Proposal: The EBRD should release both monthly and half-year updates of the plans for the EBRD Board.

Other Issues related to the Public Information Policy

Board Minutes

The current closed nature of the Board of Directors meeting does not allow citizens to find out how they are being represented. Taxpayers are unable to determine if an Executive Director is promoting issues that are important, and whether the country is supporting projects that have an adverse impact in the economic, social, environmental or other spheres. Similarly, the public is unable to determine if its country director is behaving in a way that is consistent with national law. The lack of transparency of decisions made by various International Financial Institutions has over last few years led to increased frustration among the public of recipient countries. We understand some of the reasons why the EBRD Board prefers to have closed meetings, but we believe that there are still good reasons to increase public access.

The Board minutes, and especially the Record of Vote of the Board should be disclosed to the public in shareholding countries. We understand that this change cannot be made through the Public Information Policy, but would require a change in the Rules of Procedure of the Board of Directors. But as this issue is very closely linked with Public Information Policy, and it is the Board of Directors who can amend the Rules of Procedure of the board (by a 2/3 majority of voting power), we feel it appropriate to bring up the issue at this time

We believe that public access to the Minutes of the Board and updates on its plans can help the EBRD increase public trust in the institution.

Bankwatch Proposal: The Board minutes and especially the Record of Vote of the Board should be disclosed to the public.

This paper was prepared by CEE Bankwatch Network

CEE Bankwatch Network is an association of non-governmental and non-profit civic organisations from Central and Eastern European countries.

The CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

The goals of the CEE Bankwatch Network are:

- To create public awareness about International Financial Institutions activities in Central and Eastern European countries and their social and environmental impacts.
- To promote public participation in the decision making process about policies and projects of International Financial Institutions, on the local, national and regional levels.
- To help non-governmental environmental organisations and citizen groups to monitor what the International Financial Institutions are doing in the Central and Eastern Europe.
- To change or stop environmentally and socially destructive policies and projects of International Financial Institutions in Central and Eastern Europe, and promote alternatives.
- To cooperate with environmental citizen organisations in stopping destructive activities of Transnational Corporations and to limit their overall impacts on the environment in Central and Eastern Europe.



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