



Empowering People: The Need for an EBRD Appeals/Compliance Mechanism

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The European Bank for Reconstruction and Development (EBRD) has now been established for ten years. In that period it has become the largest foreign investor in the Central and Eastern European (CEE) region. In its ten years of existence, communities and civic organisations in Eastern Europe on numerous occasions have been confronted with a situation where project sponsors did not comply with EBRD policies and procedures and/or national and international legislation.

In these cases NGOs have contacted the staff in local offices and in the London headquarters, including the President and/or the Board of Directors, with mixed results. In some cases policy, procedural and legislative violations have been addressed by EBRD staff and Directors on an ad hoc basis. It is evident, however, that there is a need for a clear process to be established that will allow the public to raise concerns about EBRD activities, and for the public to receive adequate answers to those concerns.

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A PROPOSED MECHANISM

A well-designed and implemented appeals/compliance mechanism is needed at the EBRD. Such a mechanism will allow people adversely affected by a project, as a result of policy or procedural violations, an avenue to have their complaints fairly heard and investigated. An appeals/compliance mechanism will promote transparency, accountability and policy compliance. It will, therefore, contribute to an institution that is focused on its mission and has the highest operational standards. CEE Bankwatch Network encourages the EBRD to establish such a mechanism. It is our belief that in doing so, the EBRD will not only improve its performance, but also better support sustainable development and stakeholder participation.

Regardless of the format, there are certain basic principles that should be a part of any EBRD appeals/compliance mechanism. These include transparency, accessibility, being citizen driven, essentially independent from EBRD Management, and possessed of a mandate to recommend solutions and follow up concerning investigated projects and policies. To make this possible the following characteristics should be incorporated into the mechanism and its procedural rules:

- The appeals or compliance unit must have the ability to review complaints and to conduct investigations without interference from EBRD staff and management.
- People, organisations or associations that perceive themselves as being adversely affected by a project, or their nominated representative, should be able to call for an investigation of a project. This procedure should be free of conditions that they have a deep knowledge of, and access to, EBRD policies: the process for filing a request for an investigation should not exclude people who have limited education and resources.
- The procedures should allow groups from outside the affected country/ies to submit a request for an investigation where there may be reprisals for local affected people questioning projects, and where it is difficult for local NGOs to operate. In this context, there should be the ability to protect the identity of people who file a request for an investigation.
- If the investigation team believes an investigation is warranted, an investigation should be automatically supported by the President and the Board of Executive Directors.
- The mechanism must be adequately funded and provided with sufficient personnel to allow for full and proper investigations.
- People must be able to file a request for an investigation and provide accompanying information in their national languages.
- The investigating team must have complete access to relevant EBRD documents and the project site and be able to liaise with the claimants and other local affected people.
- EBRD staff must be required to cooperate with any investigation.
- The investigating team must be able to follow up an investigated project after an appropriate period of time (determined by the investigating team and should be able to recommend solutions and future actions to be taken by Management.
- The investigating team should provide a report on each investigation to the Board with a copy being sent to the Council of Europe. This report should be made publicly available.
- The EBRD should be required to provide a timely response to the report, including a response to suggestions and actions that will be taken. This response should be made publicly available.
- The public must be notified when a claim is received, and regularly updated as to the stage at which a claim is at, and if a claim is rejected, the reasons for this rejection.
- When developing such a mechanism, the EBRD should involve NGOs and interested citizens throughout the entire process.

Through a well-designed appeals/compliance mechanism, the EBRD can become more transparent and accountable to the people of Eastern Europe and of EBRD member states. Establishing such a mechanism will help the EBRD to apply its own policies more effectively. Social and environmental issues will be considered more carefully, and as a result, more appropriate and successful projects will be financed.

CEE Bankwatch Network would welcome the opportunity to discuss the establishment of an appeals/compliance mechanism with EBRD management.

CURRENT PROBLEMS

The need for an EBRD appeals/compliance mechanism is highlighted by the record of policy and procedural violations on the part of both the EBRD and project sponsors. Citizen and NGO concerns about the EBRD and its projects fall into four categories:

Transparency

It has been a constant struggle for NGOs and the public to get access to detailed information about projects at any stage of development or implementation, especially information about social and environmental impacts of projects. Even though projects have the potential to significantly impact on peoples' lives, this information has often been withheld from them under the guise of commercial sensitivity. The Public Information Policy was introduced to ensure at least limited public access to information. Even with the introduction of this policy there have been many cases where information has been released late or not at all.

Accountability

There are accountability concerns on two fronts. First, there is accountability to the people of Eastern Europe who are affected by EBRD projects. Many of the countries in which the EBRD has been involved do not have the level of legislation or enforcement to protect citizens and the environment as can be found in Western member nations of the EBRD. People who feel that they have been wronged by the EBRD either do not have any recourse to action through their legal system, or they fear oppression from the authorities in their country if they question a project. We know that the EBRD is committed both to economic transition and also to strengthening of democratic processes. Access to information and recourse to an appeal are a key part of this.

Second is the issue of accountability to the taxpayers of member nations who fund the EBRD. Contributions from member nations are made under the assumption that the EBRD will operate within its own charter and in accordance with its own policies.

The highest level of EBRD decision making is the Board of Governors. The Board of Governors is made up of government representatives from member nations. In theory the EBRD is accountable to taxpayers through the elected government representative who sits on the Board of Governors. However, in practice, taxpayers do not have adequate access to information about EBRD strategies, policies and projects and also the decisions of the Board of Governors. They are, therefore, unable to approach their elected representative with an adequate knowledge to effectively question EBRD strategies, policies and projects.

Compliance

The EBRD is not bound by the legislative requirements of its member countries or the international conventions and covenants that they have signed. Apart from the legislative requirements of the countries in which the EBRD operates (which as stated above, are often far less stringent than in Western countries, or simply not enforced), there are very few rules that the EBRD must comply with. As a result the EBRD often supports projects and processes in Eastern Europe that would not be acceptable in its Western member countries.

However, the EBRD has established its own policies and procedures. The Public Information Policy and the Environmental Procedures are examples of these. In these the EBRD states that Project Sponsors should comply with the Espoo and Aarhus Conventions. However, Project Sponsor compliance with EBRD policies and

procedures is not closely monitored by the EBRD. CEE Bankwatch Network is aware of many instances in which Project Sponsors and even EBRD itself have failed to comply with EBRD policies and procedures. At present there is little that can be done about this.

Stakeholder Participation

Securing stakeholder participation in project development has been a constant struggle for CEE Bankwatch Network and many other NGOs. The Environmental Procedures outline minimum consultation standards for Category A project environmental impact assessments (EIAs). However, people wanting to participate in stakeholder consultations face many barriers. Very often the project documentation is not released in the national language of the country where the project will take place. Often project documentation is not widely and freely distributed in a timely way, making it very difficult to obtain a copy in time to submit comments. Consultation meetings are often not widely publicised and are held in difficult to access locations and at inconvenient times.

Minimum times that must be available for the submission of comments are outlined in the Public Information Policy. There have been several instances where Project Sponsors have tried to limit the time for the submission of comments.

There are no policy requirements for project sponsors to consult with stakeholders apart from during EIA preparation for category A projects. People who have concerns that are not addressed by an EIA do not currently have an avenue to have those concerns raised and addressed.

Attached to this report are case studies that provide concrete examples of the types of problems that have resulted from EBRD projects.

EXAMPLES OF CONCERNS ABOUT EBRD PROJECTS

In order to demonstrate the nature of the problems experienced in EBRD countries of operation, we have taken examples of projects that have been developed or implemented during 2000/2001. Many further examples from previous years exist.

A. Mis-categorisation of projects

In the case of the **Frontera Resource Project** the EBRD allowed the Project Sponsor to split the project into two parts, the first focusing on rehabilitation of the oil field sites and pilot drilling, the second focusing on full field development. From the start it was clear that the EBRD considered Frontera Resources to be a single project. This was evident when it produced a single Project Summary Document. Later, the project was split to avoid the undertaking of a full Environmental Impact Assessment at the beginning of the project. Further, the 2000 annual report presents Frontera Resources as one project approved in March 2000 as a category A/1 project. In fact the first part of the project was categorised B, which required only an Environmental Analysis without any public consultation.

Even if it is considered that Frontera Resources is two separate projects, both of these projects should be categorised as category A since the rehabilitation of the current oil fields has led to an increase in oil production.

The **Nasicecement D.D project** was incorrectly categorised as B (therefore only an environmental analyses without public participation is required). This project will increase green house gas emissions by switching the fuel for the cement kilns from gas to coal. Further, the project plans to use selected waste as supplemental fuel. Supplemental fuel often contains hazardous and toxic wastes including chlorinated organic compounds, heavy metals, sulphur, halogens and PCBs.

The project should be classified as an A level operation because the potential environmental and health consequences warrant it. Also, the Environmental Procedures states that "A" level operations will include:

- "greenfield" or major extension or transformation-conversion operations;

- integrated chemical installations including the manufacture and transportation of pesticides and hazardous/toxic materials; and
- waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes.

B. Late and incomplete release of project documentation

For the **Frontera Resources Project**, the Project Sponsor informed the NGO community about the scoping process just two days in advance in both Azerbaijan and Georgia. At the scoping meeting in Georgia, the organisers had problems determining the aims of meeting. The documents about the content of the Environmental Impact Assessment and the public consultation process were not distributed either before or during the meeting.

C. Limiting timely access to relevant project documentation

When Macedonian NGO representatives visited the Meton Etep office, the Macedonian contractor for **Tessaloniki – Skopje Pipeline**, to view the full EIA they were told that they could not see it as the Director was not there at the time of their visit.

The EBRD withheld vital environmental documents from the public, including the Environmental Analysis (EA), for the **Bratislava Road Bridge**, which, according to the EBRD's own policy, should be made publicly available. After NGOs pressured the EBRD for the EA, the government and the city of Bratislava reconsidered the involvement of the EBRD in financing the bridge project. This suggests that there may be serious environmental information about the project that the government does not want released. Further, now that the EBRD has suspended work on the project, it will not release the EA on the grounds that the project is no longer in the project pipeline.

The documentation for the **Frontera Resources Project** in Azerbaijan is officially dated May 19, 2000. The project was approved by the EBRD Board on July 10, 2000. This approval was despite the fact that the documentation was not publicly available for 60 days as is required by the EBRD Environmental Procedures. When a CEE Bankwatch Network representative paid a visit to the Salyan Oil office (the Azerbaijanian partner in the project) in Baku on June 12, 2000, he found that the EIA had not been made available to the public. The EIA had apparently been sent back from the oil company to Dames and Moore (the consulting company that produced the EIA) because Salyan Oil had reservations about the study. These reservations were not disclosed to the Bankwatch representative, and in fact the Salyan Oil employee appeared distressed that NGOs were taking any interest at all in the study. The company representative was surprised to hear that the public participation process had begun.

A visit to the Baku EBRD office was no more successful than the visit to the Salyan Oil office. Again, the EIA was not available to the public. The only document available was the EIA summary. An electronic version of the EIA documentation was made available to the public only after CEE Bankwatch Network released it on the Internet.

D. Releasing documents in national languages

Frontera Resources Corporation has not provided the Georgian and Azerbaijani public with Environmental Impact Assessments (EIA) and other relevant documentation for the **Frontera Resources Project** in national languages. In Georgia, for example, public hearings were arranged on June 23, 2000 without presenting the documentation in Georgian. This is despite the fact that on July 12, 2000, a Georgian version of the project EIA was submitted to the State Regulatory Agency of Oil and Gas Resources of Georgia. This illustrates the aims of Frontera to restrict the Georgian language EIA information flow during the EBRD procedures.

Azerbaijani NGOs had many problems getting crucial information from the company in their language. Several times Azerbaijani NGOs requested the EBRD to release the EIA documents in the local language so that the community could read them. Eventually only a summary of the EIA was translated into Russian and Azeri before the public hearings.

E. Incomplete or misleading information

In 1996 the EBRD appointed an independent panel to undertake the economic analysis for the **K2/R4 project**. In February 1997 the Panel concluded that the EBRD should not fund the project as it was not economic. This conclusion was not well received by G7 and EU, who criticised the panel's conclusions and commissioned Stone and Webster to undertake an analysis. This was done in two weeks and concluded that K2/R4 was economic. In 1998 Stone and Webster undertook a second, more detailed economic analysis, which was included in the public participation process. This analysis was criticised as it made overly optimistic assumptions for future power demand, it required unreasonably high output from the nuclear power stations and downplayed the availability of existing unused power installed capacity.

Then in 1999, a third Stone and Webster report was released, which revised the economic forecast due to changes in demand forecast and exchange rates. The document failed to treat nuclear power and the alternatives in the same way, and was biased in favour of the nuclear option. The report failed to take into account the devaluation of the Ukrainian currency on the non-nuclear construction or fuel costs while including this analysis in its calculation for K2R4. In 2000 a fourth Stone and Webster report was published which once again revised the economic analysis. However, although the report did take into consideration the impact of devaluation of the Hryvna on both nuclear and non-nuclear options, between 1999-2000, it failed to rectify the errors of Stone and Webster III and thus retained the previous errors. EBRD staff have admitted to these errors and are currently preparing to release a fifth version of the Stone and Webster analysis.

The Environmental Audit of the **Frontera Resources Project** claimed that "an improvement in the socio-economic situation in the area is anticipated during the upgrade of the facilities. Improvements are likely to occur through the following mechanisms: increased employment of local labour; additional jobs in support industries such as catering, accommodation providers and taxi drivers." (documentation for first stage of the project, approved in March 2000)

In a meeting with the oil company in Azerbaijan in May 2000, CEE Bankwatch Network learned that employment in the oil company actually decreased from 1500 to 800 people. Most of the workers fired were local workers. A reduction of workers by nearly 50% can hardly be called an improvement of the socio-economic situation in the region, which already suffers from very high unemployment.

F. Not releasing Project Summary Documents

In the case of the **Nasicecement D.D project**, the Project Summary Document (PSD) was not released prior to the project being considered by the Board of Directors. It was released a week after the Board decision. The Public Information Policy clearly stipulates that PSDs for private sector projects will be released at least 30 days prior to Board consideration unless there is sound reasons for confidentiality. Because of this, the public were excluded from commenting on the project prior to a financing decision being made.

G. Ignoring requirements of the Espoo Convention

In the case of the **K2/R4 Project**, the Ukrainian authorities failed to prepare documentation that complies with the requirements of the Espoo Convention (e.g., by not presenting a worst case scenario in the case of an accident). Further, Ukraine ignored requests from other parties to the Convention to provide documentation. Milos Kuzvart, Czech Minister of Environment, during the consultation period officially requested that Ukraine provide the Czech Environment Ministry with environmental assessment documentation for the project and to allow citizens of the Czech Republic to participate in the EIA process for K2/R4. Ukraine ignored this request and the EBRD did nothing.

Other IFI Mechanisms

Many International Financial Institutions have recognised that they also have had problems with transparency, accountability, compliance, and public participation. In response, either on their own initiative or as a result of public pressure, they have established mechanisms for appeals and compliance issues. Examples of these include:

1. The International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA)

These institutions have established a joint mechanism called the Compliance Advisor Ombudsman (CAO). The CAO has three roles:

1. To advise and assist IFC/MIGA to address complaints by people directly impacted by projects in a manner that is fair, objective and constructive. (Ombudsman.)
2. To oversee compliance audits of IFC/MIGA, overall environmental and social performance, and specific projects. (Compliance auditor.)
3. To provide independent advice to the President and management on specific projects as well as broader environmental and social policies, guidelines, procedures and resources. (Advisor)

The Ombudsman role is aimed at resolving issues by providing a context and process for parties to find mutually satisfactory solutions. It is focused on identifying problems, recommending actions, using conflict resolution and mediation approaches and addressing systemic issues, where necessary.

2. The World Bank [including the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA)]

In 1993 the World Bank established the Inspection Panel to provide an independent forum to private citizens who believe that they or their interests have been or could be directly harmed by a project financed by the World Bank. Through the Panel citizens can request the World Bank to act in accordance with its own policies and procedures.

3. Asian Development Bank (ADB)

The ADB has established an inspection function . This provides a formal procedure for any community or organisation affected by one of ADB's public sector projects to assert that the formulation or implementation of the project is inconsistent with ADB policies, to the material detriment of that group.

These mechanisms have been designed to protect citizen rights to varying degrees. The success of their implementation has also varied. Interestingly, however, many IFIs are moving to increase the powers of their appeals and compliance mechanisms, thereby recognising and further protecting citizen rights. The EBRD is one of the only IFIs that does not have an appeals/compliance mechanism.

Annex: Description of projects that were used in this paper

Khmelnitsky 2 and Rivne 4

On 7 December 2000, the EBRD Board gave preliminary approval to a loan of USD 215 million to complete two nuclear reactors in Ukraine. Completion of the reactors at Khmelnitsky and Rivne power plants (this project is known as K2/R4) has been widely discussed since 1996 when it first came to the attention of the EBRD. It was shown that K2/R4 is not economically viable, it does not meet the accepted level of nuclear safety and is widely opposed by the public. Being aware of the problems associated with the project, the EBRD Board had difficulty providing preliminary approval for the loan. Initially, 18 countries represented on the Board did not vote in favour of the project. For the final approval of the project a number of conditions must be fulfilled.

Nasicecement D.D project

On 13 December 2000, the EBRD Board of Directors approved financing for the Nasicecement D.D project. The project will convert the primary source of fuel for the company's cement kilns in Croatia from gas to coal, and also allow the use of supplemental fuels. This project comes at a time when there is an increasing global trend for industries to convert from coal to gas due to environmental concerns. Of even greater concern than the conversion to coal, are the plans for the use of supplemental fuels. Supplemental fuels often contain hazardous and toxic wastes including chlorinated organic compounds, heavy metals, sulphur, halogens and PCBs. The incineration of these substances in cement kilns does not lead to their complete destruction, but instead produces Products of Incomplete Combustion and an increase in the release of persistent organic pollutants and other toxic substances through smoke stack emissions, fly ash disposal, and the use of contaminated clinker in cement production.

Frontera Resources Project

In July 2000, the EBRD decided to allocate a 60 million USD loan for the commercial exploitation of oil by the Frontera Resources Corporation in the Kursangi and Karabagli fields in Azerbaijan and in Block 12 in eastern Georgia. This was the logical continuation of the process started in March 2000, when due to the miscategorisation of the project, a 10 million USD loan was approved by the EBRD Board without requiring an Environmental Impact Assessment (EIA) and proper public consultations. The Frontera Resources Corporation project in Azerbaijan and Georgia represents a clear example of a highly controversial project in the whole cycle of development. The project violated EBRD environmental procedures and aims to extract oil in a strict Nature Reserve area in Azerbaijan, established for the protection the endangered Jayran deer.

Bratislava Road Bridge, Slovakia

Late in 2000, the European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB) announced their joint venture in financing the construction of a road bridge ('Kosicka bridge') in Bratislava, Slovakia. Originally, the project was to be funded primarily by the European Banks, with the EBRD and EIB contributing equal shares and the remaining one-fourth of the funding coming from local banks. The EIB has already approved a loan for the bridge construction, while the EBRD has put the project on hold. Concerned citizens and organisations in Bratislava are unsatisfied with the situation surrounding the Kosicka bridge and have demanded from the Banks, a full Environmental Impact Assessment (EIA) process, which would included further consultations and environmental and social analysis.

Tessaloniki – Skopje Pipeline

The Greek company ELPET VALKANIKI S.A has received a 50 million USD EBRD loan to construct a 213 kilometre pipeline between Thessaloniki in Greece and Skopje in Macedonia. The 16 inch diameter pipeline will connect the ECO Refinery in Solun and OKTA Refinery in Skopje and will carry 2.5 million tones of various crude oils each year. The total cost of the project is 90 million USD with per annum operational costs of 2.5 million USD.

This paper was prepared by CEE Bankwatch Network

CEE Bankwatch Network organises environmental NGOs from 11 countries in Central and Eastern Europe (Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Lithuania, Latvia Poland, Slovak Republic and Ukraine).

The goals of the CEE Bankwatch Network are to stimulate improvement in the state of the environment, promote and undertake charitable, expert and educational activities improving the state of environment, and support such activities undertaken by other non-profit organisations and especially to:

- Create public awareness about the activities of International Financial Institutions (IFIs) and their social and environmental impacts.
- Promote public participation in decision-making processes about IFIs policies and projects, on the local, national and regional levels.
- Help non-governmental environmental organisations and not-for-profit civic organisations to monitor IFIs.



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