



Global Transparency Initiative

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network

## **Initial Comments on the EBRD Public Information Policy Review**

### **CEE Bankwatch Network and the Global Transparency Initiative**

**December 2007**

#### **Introduction**

On 20 November, the European Bank for Reconstruction and Development (EBRD or Bank) sent out a document entitled Public Information Policy Review: Invitation to Comment, calling for submissions on the existing Public Information Policy (PIP), adopted in 2006, as amended/clarified by two documents, entitled Confidential Information and Information Requests Guide, which came into effect in January 2007. Please accept this document as our Comments on the EBRD's existing Policy. These Comments draw heavily on earlier comments provided by Bankwatch and GTI during the 2006 PIP review and the development of the Information Requests Guide later that year. Additionally, we present here observations made on the 2007 Environmental Policy review issues paper.

These Comments are in two parts. The first part details the structural changes needed to institute a true presumption of disclosure, in line with the statement in paragraph 1.1 of the PIP "that, whenever possible, information concerning the Bank's operational activities will be made available to the public in the absence of a compelling reason for confidentiality". The second part comments on the information which is specifically identified for disclosure under the current PIP and how this should be further enhanced.

#### **1. Moving to a True Presumption of Disclosure**

As the GTI noted in its comments of April 2006, a true presumption of disclosure, based on a system for responding to requests for information, requires the following: (a) minimum process guarantees including a requirement to provide information in a timely manner; (b) an obligation to provide all information requested subject only to a narrow regime of exceptions set out in the policy; and (c) the right to request a review of any refusal to provide information from an independent body to ensure accountability. These standards are reflected in the GTI's *Transparency Charter for International Financial*

*Institutions: Claiming our Right to Know*, available on the website of the Global Transparency Initiative.<sup>1</sup>

### **1.1. Procedure**

We commend the EBRD for adopting the Information Requests Guide, which has addressed a significant gap in the 2006 policy. These could still, however, be improved in the following ways, all also listed in the GTI's December 2006 comments.

First, the EBRD should make a commitment to assist requesters who for whatever reason are having difficulty formulating their requests. Such a commitment is common in national access to information legislation, is called for in the Charter, and is appropriate given the difficulty faced by requesters who are not familiar with the information systems of the EBRD. While this will obviously require some additional resources from the EBRD, the impact of this may be mitigated by qualifying the amount of assistance, for example by committing to provide reasonable assistance, taking into account resources.

Second, while we welcome the establishment of a central contact point for receiving requests for information, as well as the option to file requests with Resident Offices, stakeholders should be able to contact any Bank staff member directly to request information.

The Information Requests Guide currently states that the Bank will provide information in the same mode as the request, unless the requester stipulates a different mode of communication. While welcome, this does not actually contain a positive commitment by the Bank to provide information in the form stipulated by the requester.

Fourth, the Charter calls for the publication, including over the Internet, of a register listing "the key documents and other records" held by IFIs. This facilitates requesters' ability to formulate their requests for information accurately and precisely. Neither the Information Requests Guide nor the PIP itself provide for such a register.

Fifth, the Information Requests Guide provides for the Bank to respond to requests within 20 days, which may be extended for a further 20 days. The Charter suggests that the initial period should be no longer than 15 days. This is sufficient time for a response if the Bank maintains its records in good order and, for exceptional cases, there should be a possibility of extending the response period by another 15 days.

Sixth, we welcome the commitment in the Information Requests Guide to provide information in the language preference stipulated by a requester where the Bank holds the information in that language. However, we also believe the Bank should make a positive commitment to allocate resources to translate documents where this is in the public interest. The Charter provides:

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<sup>1</sup> Available at: [http://www.ifitransparency.org/activities.shtml?x=44474&als\[select\]=44474](http://www.ifitransparency.org/activities.shtml?x=44474&als[select]=44474).

Where reasonably possible, information should be provided in the language requested and translation should always be provided where this is in the public interest, for example because the information is of interest to a whole community.

**Recommendations:**

- ✓ *A commitment should be made to provide 'reasonable' assistance to requesters who are having difficulty formulating their request.*
- ✓ *Requests should be able to be submitted to any Bank official.*
- ✓ *The Policy should establish a positive commitment on the part of the Bank to respond to requests in the form stipulated by the requester whenever this is reasonably possible.*
- ✓ *A list of key documents and other records held by the EBRD should be made available over the Internet and updated regularly.*
- ✓ *The time limit for responding to requests should be reduced to 15 days, which may be extended, in exceptional cases, by a further 15 days.*
- ✓ *The Bank should make a commitment to allocate reasonable resources for the translation of documents where this is in the public interest.*

## **1.2. Exceptions**

Principle 5 of the Charter provides:

The regime of exceptions should be based on the principle that access to information may be refused only where the international financial institution can demonstrate (i) that disclosure would cause serious harm to one of a set of clearly and narrowly defined, and broadly accepted, interests, which are specifically listed; and (ii) that the harm to this interest outweighs the public interest in disclosure.

The regime of exceptions in the PIP fails to conform to these standards in important ways and the Bank's Confidential Information document does little to address this. Some of the exceptions are not clear and narrow. For example, the first bullet in Box 2 of the PIP refers to "documents intended for internal purposes" which could be interpreted very differently, and anything but narrowly, by different people.

Far more problematical, however, is the absence of harm requirements for many of the exceptions. These include, among others, documents "intended for internal purposes only, or classified under the Bank's internal classification regime", "Board documents", "information in the Bank's possession which was not created by the Bank and is identified by its originator as being sensitive and confidential" and "financial, business or proprietary information of private entities" in the absence of consent to disclose. None of these require any proof that disclosure would be likely to harm any protected interest. Together they allow the Bank or, where relevant, a third party to render confidential practically all information held by the Bank.

Although many national right to information laws do include some sort of internal deliberations exception, few are phrased as broadly as the Bank's. The better laws identify the particular interests which may be harmed, such as the free and frank provision of advice or the integrity of the policy process which might be harmed by premature disclosure. The same is true in the context of board documents, where again

specific interests, such as the ability of the board to operate effectively, should be identified. Progressive right to information laws do not permit mere classification of documents to act as an exception to the right of access. Using classification as an exception allows officials with the power to classify to set the boundaries of the right of access, which is clearly illegitimate and directly contrary to the stated presumption in favour of disclosure. Instead, the boundaries of the right should be defining by the Policy.

The Policy grants those who originate documents a free veto over whether these documents may be released. We note that the addition of the term ‘legitimately’ to the exception in the sixth bullet of Box 2 during the 2006 review does nothing to address this problem, since this is an alternative to the main veto, as signalled by the term ‘or’. The last bullet extends the veto to any information concerning a private third party, regardless of whether or not that party supplied the information. As we have repeatedly stressed, giving the originators and subjects of documents the power of veto not only directly contradicts the presumption of disclosure (they are not required to identify any reason for confidentiality, let alone a compelling one) but is also absolutely not necessary. The vast majority of national right to information laws only protect information the disclosure of which would *harm* a legitimate interest of the third party supplier. These rules apply to a multitude of national bodies, including many which compete in various markets. These bodies, in an analogous fashion to the Bank, receive all kinds of sensitive and (non-sensitive) information from third parties, including commercial information, and yet their disclosure obligations do not hinder their ability to operate successfully. This demonstrates, beyond any doubt, that the Bank’s acceptance of the veto out of concern about its ability to operate in the market is simply not founded.

Paragraph 3 of the Bank’s Confidential Information document, providing for a form of public interest override, is welcome. At the same time, it is cast in the very narrowest of terms (as signalled by the phrases ‘exceptional circumstances’, ‘may exercise this right’, ‘avert imminent and serious harm’ and ‘most restricted basis’). The fact that it is discretionary in nature actually undermines the interests the Bank wishes to protect. It is important that those providing information to the Bank have a clear sense of when the information they provide will be subject to disclosure, and discretionary release clearly fails to achieve this. Furthermore, clients may legitimately complain where discretion is exercised in favour of release, whereas they cannot do this where the override is mandatory in nature.

Another problem is that the override applies only in the context of a very limited range of public interest situations (namely threats to public health, safety or the environment), which do not even include controlling corruption, the most widely touted reason for openness. Once again, experience at the national level demonstrates that a much stronger form of public interest override – one that is not discretionary in nature and that applies to all overriding public interest situations – is perfectly compatible with both ‘doing business’ and maintaining good relations with clients and others.

***Recommendations:***

- ✓ *The exceptions in Box 2 should be redrafted in terms that are clear and narrow.*

- ✓ *All exceptions should include a harm test. The following specific changes should be made to reflect this:*
  - *Administrative classification of a document by a Bank official should be irrelevant to the question of disclosure, which should be decided by direct reference to the regime of exceptions in the Policy.*
  - *The exception for internal documents should be replaced by an exception or exceptions which protect legitimate interests, such as the free and frank exchange of ideas.*
  - *The system of originator/subject control should be replaced by an exception which protects the legitimate commercial and other interests (such as privacy) of third parties.*
- ✓ *The public interest override should be substantially strengthened. It should be mandatory rather than discretionary in nature and it should apply in the context of all, or at least a far greater range, of overriding public interests.*

### **1.3. Appeals**

Principle 6 of the Charter provides:

Anyone who believes that an international financial institution has failed to respect its access to information policy, including through a refusal to provide information in response to a request, has the right to have the matter reviewed by an independent and authoritative body.

We welcome the addition, through the Information Requests Guide, of an internal appeal to the Secretary General and we hope that this will be effective in resolving many access to information complaints. We are also aware of the possibility, in project-related cases involving harm, of submitting information complaints to the Independent Recourse Mechanism (IRM).

At the same time, the PIP lacks a proper independent appeal system for information related complaints. The internal appeal to the Secretary General is not an independent level of appeal. The IRM mechanism is extremely limited in scope – applying only to cases where a failure to apply the policy actually caused harm to project affected groups – and is also unduly burdensome for information appeals. Two recent complaints submitted to the IRM, against the Secretary General’s failure to fulfil his appeal processing mandate and against the EBRD non-disclosure of the date of PIP entry in force, clearly demonstrate the shortcomings of the IRM as an appeal body for information complaints.

We therefore reiterate our call for the EBRD to put in place an independent appeal system for those dissatisfied by the response to their requests for information.

***Recommendation:***

- ✓ *The Policy should provide for an independent appeal system, which operates rapidly and easily, for information related complaints.*

## 2. The Disclosure of Specific Types of Information

### 2.1. General institutional information

#### Board minutes

We welcome the EBRD's decision to release the minutes of board meetings that include "(i) the names of attendees; (ii) a record of the approval of the Minutes of the previous meeting; (iii) titles of the agenda items; and (iv) agreements and decisions reached". We agree it is an important step towards good governance. However, we firmly believe that citizens should have the right to see how they are represented at the board and hold Executive Directors accountable for their decisions. In the spirit of true accountability, the Bank should also include (v) a record of voting; (vi) opinions expressed; and where relevant (vii) written statements prepared by the Executive Directors among the information disclosed under Board meeting minutes. While minutes provide a legal record of the decisions taken, they do not reflect the discussion in its entirety. For this reason, the Bank should also publish summaries and transcripts of Board meeting discussions.

We are pleased that the Board Minutes from the past two years have been made accessible at the EBRD's website. We recommend that for better clarity and easier access the Board minutes are uploaded to a dedicated webpage. The minutes are hard to find at their current location at the bottom of the Strategies and Policies webpage.

We request once again that the Board minutes be released in a timely fashion after the Board of Executive Directors approves the minutes at the next meeting but no later than 15 working days after their approval. In the current practice Board minutes are sometimes made available online with a delay of more than two months. I.e. the last minutes published online come from the October 9 Board meeting. In the meantime, the Board had however several other meetings where consequent minutes were likely made and approved.

#### **Recommendations:**

- ✓ *The PIP should require that the minutes of board meetings include a record of voting, opinions expressed and written statements prepared by EDs where applicable.*
- ✓ *The Board minutes should be released after their approval by the board. The disclosure date should not exceed 15 working days from the effective date.*
- ✓ *The EBRD should release summaries and transcripts of Board discussions within 15 and 30 days of the meeting, respectively.*

#### **Organigram of the EBRD**

We appreciate the EBRD's efforts to publish an organigram of the Bank with all its departments and component parts. To make this organigram truly comprehensible, the EBRD should indicate the hierarchy of the institutional structure and add description of the various departments and components and decision-making procedures inside them. If the size and conception of the organigram does not allow this, the description of

departments, their activities and hierarchy within should appear under a relevant webpage of the EBRD website.

***Recommendations:***

- ✓ *The EBRD should disclose a description of Bank departments, their activities and hierarchy.*

**Staff directory**

The current EBRD website does not list full contacts to all the Bank staff. In the light of the EBRD's proclaimed "willingness to listen to third parties", such an absence of contacts comes as an alarming oversight. To enable the public to communicate openly with the EBRD staff, the EBRD should release and regularly update e-mail, telephone and fax contacts to all its employees on its website. In case of not releasing the contacts, the EBRD should offer compelling reasons why it chose not to do so.

We commend once again the Bank and the executive Directors for releasing e-mail addresses to the Constituency offices. We believe this is an important step to open up the EBRD Board to the stakeholders and to enhance the overall accountability of the Bank. We encourage the Bank to continue to enhance Board transparency and disclose the fax and telephone numbers to the Constituency offices so that the public can better communicate with their representatives.

On the practical note, we would like to note that we have experienced failures with delivery of our messages to some of the Constituency offices' e-mail addresses.<sup>2</sup> Furthermore, although the Information Requests Guide appoints Resident Offices to act as alternate contact points, the online list of the EBRD Local Offices lacks e-mail contacts, which are essential for this purpose.

***Recommendations:***

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<sup>2</sup> ----- Original Message -----

Subject: Delivery Status Notification (Failure)  
Date: Tue, 24 Jul 2007 10:42:20 +0100  
From: postmaster@ebrd.com  
To: klara.schirova@bankwatch.org

This is an automatically generated Delivery Status Notification.

Delivery to the following recipients failed.

U.S.Aconstituents@ebrd.com  
RussianFederationBelarusTajikistanConstituent@ebrd.com  
UkraineConstituency@ebrd.com  
FranceConstituency@ebrd.com  
CanadianConstituency@ebrd.com

- ✓ *Complete staff contacts directory, including contact emails for Resident and other Local Offices, should be made publicly available through the EBRD's website.*
- ✓ *The EBRD should disclose the fax and telephone numbers to the Constituency offices so that the public can better communicate with their representatives.*

### **Visits of EBRD staff to countries of operation**

Meetings of EBRD staff travelling to EBRD countries of operation (COO) with local NGOs become more frequent; these meetings however do not constitute a regular practice. NGOs learn about the visit of EBRD representatives to a COO at a stage in which it is too late to request a meeting if this had not been scheduled by the Bank. Only a selected group of NGOs is addressed with an invitation to attend the meeting with the EBRD.

We believe that the meetings have proved to have a positive effect on the dialogue between the EBRD and stakeholders. For this reason, we recommend that the PIP provides for that visits of the EBRD President, board members and senior management to COOs are communicated with sufficient notice to the local NGOs through the mailing list or through the calendar at the Strategies and Policies webpage.

#### ***Recommendations:***

- ✓ *The PIP should require the disclosure of a schedule of President, EDs and senior management visits to countries of operation with adequate anticipation.*

## **2.2. Information on policies and strategies**

We welcome the EBRD's decision from 2006 to enhance procedures for the development or review of a policy or strategy, notably to release the draft country strategies and to keep a running list of policies and strategies it expects to review a year ahead. We are also pleased to see that EBRD has applied a systematic approach for the review of the Environmental Policy and Public Information Policy, specifically that it has established a tradition of a several stage review process that comprises of written commenting as well as the consultation workshops. We are convinced that these changes have enabled broader and more considerate participation of stakeholders to the reviews. We therefore suggest that the new PIP incorporates systematic guidelines for the development or review of policies and strategies along the specific recommendations below.

#### ***Recommendations:***

- ✓ *The PIP should introduce common guidelines for reviews and developments of policies and strategies.*

### **Public Consultations and Disclosure Plan**

Prior the review of a policy or strategy, the EBRD should disclose a detailed plan outlining the character of the process, its timeline, the opportunities for consultation meetings and disclosure. The EBRD should release all the materials that will be presented in the decision-making – such as report on implementation of the existing policy, issues

paper, draft(s), external comments and Management's response to comments – soon after their elaboration but always prior to the Board meeting over the strategy or policy.

***Recommendations:***

- ✓ *EBRD should disclose a detailed Public Consultations and Disclosure Plan outlining the character of the review or development process, its timeline, the opportunities for consultation meetings and disclosure.*
- ✓ *The EBRD should release all the relevant materials including the second draft, external comments and the Management's response prior to the Board meeting over the strategy or policy*

**Several stage review process**

In order to ensure dedicated external contribution to the process, the reviews should consist of at least two stages in which public is allowed to comment on two consequent drafts or a well elaborated issues paper. In the first stage the EBRD should produce a policy/strategy draft or a well elaborated issues paper and submit it for public comments. In the next stage, a revised draft policy/strategy should be drawn up and submitted to the consultation process. In parallel, a consultation meeting or workshops should be organized to enable a more focused exchange of views. The final revised draft policy/strategy should be made available to public with a summary of the external comments and staff responses on the website before it is submitted to consideration and final approval by the Board of Directors.

***Recommendations:***

- ✓ *EBRD should adopt a several stage policy/strategy review and development process consisting of commenting on two consequent drafts or a well elaborated issues paper and a draft and consultation meeting.*

**Disclosure of public comments**

If the EBRD seeks the active and thoughtful participation of stakeholders during the development and review of its strategies and policies, it should let the public know whether their comments and other external input were received and how they have been reflected. Until now, the external comments have not been subject to public scrutiny in their full extent and during the review process. The EBRD should therefore release all incoming public comments in their original form in the course of the policy or strategy review on a dedicated website.

***Recommendations:***

- ✓ *The PIP should ensure that all incoming public comments are released in their original form in the course of policy or strategy reviews.*

**Disclosure of second draft policies and strategies**

The current PIP does not require that a second draft policy or strategy be released. As a result, the public gets to know how external comments have been incorporated only after

the Board's approval which prevents them from further engagement in the decision-making process. To encourage a constructive and continued dialogue with the stakeholders throughout the review, the EBRD should offer a second draft of policies and strategies for external comments. The draft should be made publicly available at the minimum 10 working days prior to board approval.

***Recommendations:***

- ✓ *The EBRD should disclose second draft policies and strategies 10 working days prior to their board approval.*

**Disclosure of Management's response to comments**

Timely disclosure of Management's response to comments is another element of an effective consultation process. The EBRD should release the Management's response to comments prior to the board approval, at the time the final draft policy or strategy is released.

***Recommendations:***

- ✓ *Management's response to comments ought to be released prior to the Board approval, at the time the final draft policy or strategy is released.*

**Comprehensive list of policies and strategies**

We are happy to see that the 2006 PIP committed to maintain a rolling list of policies and strategies scheduled to be reviewed in the coming year. Items should be added to the list soon after the development or review concept is approved by the Management to enable external stakeholders to plan their time accordingly and get well prepared for the input. I.e. the review of the IRM scheduled for 2008 is missing from the online schedule. In the similar way, the public has not been informed about the EBRD's plans for revision of the Transport policy which should take place in the coming year.

***Recommendations:***

- ✓ *New policies and strategies development and reviews should be listed as soon as their concept is approved by the Management.*

**Country Strategy Action Plans**

If the development of CS is to bring effective results, the EBRD should include an action plan on the implementation of the given strategy in the CS documents. As a competent partner consulted in the decision-making process, the public should have a right to get familiar with the CS implementation.

***Recommendations:***

- ✓ *The EBRD should include an action plan on implementation of the strategy within the Country Strategy documents.*

## **Translation of Environmental Procedures**

We commend the EBRD for translating of the Public Information Policy, the Independent Recourse Mechanism and the Environmental Policy into the relevant official national languages on progressive basis. We reiterate our recommendation that the Environmental Procedures become a part of this translation list. Environmental Procedures is a document containing a set of EBRD requirements for the environmental aspects of projects and activities. As such they should be understandable to project sponsors and the general public in countries of operation. Environmental Procedures should be translated into the Russian language first, then gradually to other languages of countries where EBRD is actively involved.

### ***Recommendations:***

- ✓ *The EBRD should translate Environmental Procedures into the relevant national languages.*

## **2.3. Project-related information**

As a majority of project-specific environmental information produced during the project cycle remains confidential, the PIP needs to be expanded to include a robust set of disclosure requirements for the EBRD. In order to more fully balance its dual mandate, the EBRD should continually provide project information to stakeholders both before and after Project Summary Documents (PSD) are released, and prior to the project completion evaluations of the Evaluation Department. The PIP should include disclosure requirements for environmental information produced throughout the project cycle, including the initial phases of project preparation and appraisal, and the latter stages of implementation and completion.

Regrettably, the EBRD uses no Internet-based tool for tracking project status and archiving project-related information. Such a tracking mechanism would bring together relevant project information and documents in all phases of the lending cycle and make these documents readily available through an updated and searchable database.

One way to achieve substantive increases in transparency of operations during the project cycle is for the EBRD to adopt a genuine presumption in favour of disclosure. Such a presumption was advocated during the recent revision of the PIP, and while the bank has made some important steps in this direction, it still has some areas in which to progress further towards openness.

The basic tenet of a true presumption of disclosure is that all documents possessed by the bank should be publicly available and proactively disclosed. In the case of business confidentiality for some sensitive information held by the EBRD, the disclosure of this information should be subjected to tests against a public interest override.

Recognising that the enhancement of transparency within an institution is a gradual process, below we outline areas where we feel pro-disclosure reforms are most pressing.

To demonstrate the level of openness of the EBRD and to enable easier communication with the public, we recommend that the Bank keeps an overview of the environmental information and documentation that is disclosed routinely or upon request by the institution and its clients.

***Recommendations:***

- ✓ *The PIP should ensure a routine disclosure of project based information throughout the complete project cycle.*
- ✓ *The EBRD should keep an overview of the environmental information and documentation that is disclosed routinely or upon request by the institution and its clients*
- ✓ *The Bank should establish an Internet based resource for tracking project status and all the relevant project based information and documents.*

## **Project assessment**

### **Private Project Summary Documents minimum release**

Whereas public sectors PSDs require a minimal disclosure period of 60 days, private sector PSDs are released only 30 days prior to consideration by the Board. To allow effective engagement of citizens in EBRD project financing, the EBRD should extend the disclosure period of private sector PSDs to 60 days and ensure that they are released immediately after the project has passed its Initial Review by Bank Management.

***Recommendations:***

- ✓ *Private sector PSDs should be released 60 days prior to the board meeting and soon after the project has passed its Initial Review by Bank Management*

### **Translation of Project Summary Documents**

We recognize the EBRD's commitment to make PSDs accessible to all the interested parties, and the general public by providing for their translation into national languages. We would like to note that translated PSDs do not always include the identical information as English originals and they get hardly updated.

***Recommendations:***

- ✓ *Translated PSDs should bear the same amount of information as the English originals.*
- ✓ *Translated PSDs should get routinely updated.*

### **Project Summary Documents for Financial Intermediaries projects**

The EBRD informs the public of those Financial Intermediaries (FI) projects going under board approval through PSDs. The PSDs, however, rarely contain details on subprojects that the FI will likely be financing and on their associated environmental and social impacts. The EBRD hardly updates these PSDs during the lifetime of the FI projects; as a result the public is deprived of the opportunity to engage in the projects.

- ✓ *EBRD should disclose the list of subprojects financed through FIs in the PSDs and expand on the environmental and social impacts of these in regular PSD updates.*

### **Routine updating of the Project Summary Documents**

In order to inform public about implementation and possible changes in the project, the EBRD should update PSDs on a regular basis throughout the project cycle, particularly during project implementation, which in practice rarely happens. The EBRD should update PSDs at a minimum annually.

- ✓ *EBRD should update PSDs for new information on implementation and changes in the project as soon as they occur.*
- ✓ *With active projects the EBRD should update the PSDs at a minimum annually.*

### **Routine disclosure of factual and technical documents related to project preparation**

As aforementioned, the automatic disclosure of project related information in all the phases of the project is a key element in effective public participation in decision-making process. The current PIP has no provisions for disclosure of factual and technical documents prepared in the early stages of a project, which prevents timely response and comments from the affected communities. This documentation should be made publicly available through the online PSDs or, more conveniently, inside a project profile within the project tracking system.

#### ***Recommendations:***

- ✓ *Project based factual and technical documents should be available online and linked to the project PSD.*

### **Initial discussion papers**

The EBRD should disclose in its entirety all the initial discussion papers, including the Concept Clearance Memorandum, Concept Review Memorandum, Environmental Screening Memorandum, draft Environmental Summaries, Initial Environmental Examinations, Final Review Memorandum.

#### ***Recommendations:***

- ✓ *Initial discussion papers should be made available in their full extent and at the time they are produced.*

### **Loan contracts**

The EBRD should disclose all documents related to the loan agreement between the EBRD and the project sponsor, including the client's Environmental Action Plan, loan contract and social and environmental impact assessment documents.

#### ***Recommendations:***

- ✓ *The EBRD should disclose all documents related to the loan agreements between the EBRD and the project sponsor.*

### **Board reports for private sector projects**

The current policy contains provisions for the release of board reports for public sector projects only. We see the absence of such provision for private sector projects as unjustified and discriminatory.

#### ***Recommendations:***

- ✓ *The EBRD should make publicly available board reports for private sector projects. If the reports contain any confidential information, this can be excluded from the reports.*

### **Project implementation reports**

To enable well informed participation in the implementation stage of the project, the PIP should require the disclosure of all project implementation reports, including Annual Environmental Reports, Periodic Environmental Audits and Exit Audits.

#### ***Recommendations:***

- ✓ *The EBRD should disclose all project implementation reports, including Annual Environmental Reports, Periodic Environmental Audits and Exit Audits.*

### **Environmental Action Plans**

The disclosure of Environmental Action Plans (EAPs) is an important measure which will help the public understand the ways in which management, mitigation and monitoring will occur during project implementation and operation. This disclosure of EAPs is also an important instrument to ensure client accountability. The EBRD has so far disclosed EAPs only for several high-risk projects. While public requests for disclosure have been dealt with on a case-by-case basis, a systematic approach should be adopted, to put in place clear regulations for disclosure of EAPs in cases of high- and medium-risk environmental and social projects. Where confidentiality concerns are raised by the project sponsor, sensitive parts can be blacked out unless there is an overriding public interest in the information.

#### ***Recommendations:***

- ✓ *The EBRD should systematically disclose Environmental Action Plans, particularly for the A category projects.*

### **Monitoring reports**

We advise that the EBRD follows the good example of the EIB and releases at the minimum upon request the environmental information gathered by the Bank during the project monitoring. This includes:

- ✓ Monitoring Mission Reports

- ✓ Project Progress Reports
- ✓ Project Completion Reports
- ✓ Environmental studies, provided by a project promoter or other third party

## **Annual Environmental Reports**

The current practice of including the annual environmental reports (AER) summaries in the text of the PSD is confusing as the information is not structured and is hidden in the text. The brevity of the environmental updates has little informative value to affected citizens and interested stakeholders. Moreover the AER summaries are often missing from the PSDs. We are convinced that in order to ensure good information flow to the public, environmental annual reports should be released in the public domain routinely, with an annual periodicity and in their entirety and not in a form of summaries. We also suggest that they are not included in the text of a PSD but that they are disclosed as stand-alone documents.

### ***Recommendations:***

- ✓ *The EBRD should routinely disclose environmental annual reports as stand-alone documents that are linked with the projects PSD.*

## **Environmental and social assessment documents (Spill Prevention, Control and Countermeasure Plans, Emergency Response Plans)**

The PIP should require that supplemental environmental and social assessment documents, including but not limited to Spill Prevention, Control and Countermeasure Plans, Emergency Response Plans and consultants' evaluations of particular aspects of social and environmental impact are part of the overall assessment process and should be subject to the same requirement for timely disclosure unless they have been disclosed as the part of the EIA.

### ***Recommendations:***

- ✓ *The EBRD should disclose supplemental environmental and social assessment documents unless these have been released as the part of EIA.*

## **Environmental Impact Assessments**

Environmental Impact Assessments (EIAs) for Category A private sector projects should be disclosed 120 days prior the project's Board date to enable thoughtful input of the external stakeholders.

As part of the due diligence and consultation process, full EIAs for Category A projects should be regularly disclosed in English and national languages on the EBRD website. Currently the EBRD releases only EIA summaries and leaves disclosure of full EIAs to project sponsors. However experience indicates that project sponsors often fail to abide by these disclosure and public consultation requirements.

***Recommendations:***

- ✓ *The EBRD should disclose EIAs for private sector projects for 120 days.*
- ✓ *Full EIAs for Category A projects should be regularly disclosed in English and national languages on the EBRD website*

**Environmental Analysis**

Environmental Analyses for Category B projects should be routinely disclosed by the EBRD. The current Policy only requires the project sponsor to disclose summaries of “the mitigation measures, action plans and other initiatives agreed” in an “appropriate language”. Moreover, our experience shows that the project sponsors fail to disclose even the environmental summary. Given the significant impacts that Category B projects may have on communities (e.g. the Kaufland project), it is recommended that the EBRD discloses Environmental Analysis as a stand alone document or as part of a feasibility study on its website alike the EIAs.

***Recommendations:***

- ✓ *The EBRD should disclose Environmental Analysis as a stand alone document on its website alike the EIAs.*

**Project completion and evaluation**

To enable well informed participation at the final stage of the project, it is crucial that the public is informed about project results and evaluation carried out by the Bank. The Bank should disclose full reports produced by the Project Evaluations Department, including Operation and Performance Evaluation Reports. The reports should be released at the time of their submission to the Board for approval.

***Recommendations:***

- ✓ *The EBRD should disclose all project evaluation reports in their entirety and at the time of their submission to the Board.*

**Topic-specific studies and analyses**

The EBRD is encouraged to release topic-specific studies and analyses elaborated or commissioned from independent experts and consultants and held by the Bank, such as the recent gender analysis. The EBRD should follow the example of the EIB whose current practice allows that.

***Recommendations:***

- ✓ *The EBRD should release topic-specific studies and analyses elaborated or commissioned from independent experts and consultants.*

## **2.4. Accountability and governance**

### **Annual Anti-Corruption Report**

We welcome the EBRD's decision to make its Anti-Corruption Report publicly available on a one year basis. In order to contribute meaningfully to EBRD integrity, the report should include general information on allegations of fraud and corruption filed against EBRD staff or EBRD-financed operations, their current review status, the key findings of investigation, and a description of how the complaints were addressed.

#### ***Recommendations:***

- ✓ *The Anti-Corruption Report should include general information on allegations of fraud and corruption filed against EBRD staff or EBRD-financed operations, their current review status, key findings of investigation, and description of how the complaints were addressed.*

### **Project Evaluation Department Documents**

We commend the EBRD intention to encourage the participation of stakeholders in the completion phase of the project cycle by disclosing selected documents of the Project Evaluation Department (EvD). By stipulating its right to hold the EvD documents disclosure protected by commercial confidentiality, the EBRD limits the full and well informed participation of stakeholders in the decision-making process. The business confidentiality interest should not override the public right to information. The EBRD should therefore clear the disclosure of EvD documents from any exception clauses.

#### ***Recommendations:***

- ✓ *The documents produced by the Project Evaluation Department should be released in their entirety and without confidentiality exceptions.*

For more information, and for any questions regarding these comments, please contact:

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