



Comments to the European Bank for Reconstruction and Development Regarding the Review of its Public Information Policy 14 April 2006

On 1 March 2006, the European Bank for Reconstruction and Development (EBRD) posted on its website a draft Public Information Policy (PIP) for a 45-day public commenting period. The following are recommendations on the draft PIP from the Global Transparency Initiative, a network of civil society organizations promoting openness at the international financial institutions (IFIs). In many places, these comments build on suggestions outlined in our letter of 20 February 2006.

Our recommendations are organized under five headings:

1. Providing for a true presumption of disclosure
2. Private Sector Operations and Lending to Financial Intermediaries
3. Routine Disclosure of Project Information: Timely and Ongoing
4. Transparency for Effective and Informed Consultation
5. Additional Comments on the draft PIP

A note on process: While we appreciate this opportunity to comment on the EBRD's draft PIP, we are concerned about the extent to which the Bank has actively out-reached to a wide array of stakeholders to seek input on the PIP development. Very little information has been provided on the Bank's website regarding the scope of the review process, dates and locations of in-person consultations, and comments already received. Furthermore, given the lack of time to effectively review the 2005 PIP Implementation Report (posted to the Bank's website on 10 April), we were not able to incorporate those findings into our comments.

We look forward to any questions and reactions the Bank may have to our recommendations, including whether or how they will be incorporated into the final PIP.

Sincerely,

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Introduction

The ongoing review of the Public Information Policy (PIP) at the European Bank for Reconstruction and Development (EBRD) occurs as the Bank continues to explore ways in which it can balance responsibilities to both its private-sector clients and its public-sector stakeholders. While the EBRD promotes economic integration in transitioning countries through a business approach, it must also advance effective and sustainable development outcomes in Bank operations by remaining accountable to the public. The PIP review presents the EBRD with the opportunity to continue to promote itself as a viable source of financing for its clients, while adopting some much needed provisions for increased openness.

Transparency and accountability compliment the EBRD's business approach by facilitating efficiency and effectiveness of Bank operations. As the findings of the G22 Working Group on Transparency and Accountability¹ suggest, "[Transparency and accountability] contribute to higher quality decisions in both the public and private sectors, leading to improvements in resource allocation, macroeconomic stability and ultimately in economic growth and prosperity." Further, the Working Group finds that, "Transparency is an important means of enhancing the performance and public accountability of international financial institutions." The Working Group's recommendations highlight the benefits of transparency to the EBRD's business-sensitive mandate and are particularly insightful from a body convened specifically to "discuss the appropriate balance between the opposing needs for confidentiality and transparency of the IFIs."²

In addition to its benefits for a safeguarded business approach, increased transparency as defined in the PIP would also support the EBRD's mandate to promote effective and sustainable development outcomes and public accountability to its numerous stakeholders. As the Working Group notes, "The public needs to be informed about how well IFIs are fulfilling their responsibilities. Furthermore, IFIs are public institutions, funded with public funds...and thus IFIs are also accountable to the general public." To this extent, the Working Group explicitly links accountability and transparency of IFI operations with successful development outcomes and stakeholder acceptance and ownership of IFI activities: "Transparency facilitates increased public participation in the design and implementation of development projects. This in turn helps improve the design and implementation of projects, especially in terms of the project's suitability for local conditions. Furthermore, participation facilitates local ownership and, in general, contributes to the ultimate success of the project."³

The draft PIP makes some important recommendations for improving EBRD transparency and brings the Bank closer to meeting the G22 Working Group principles outlined above. Among other things, the draft policy requires the disclosure of: minutes from meetings of the Board of Directors; Terms of Reference for Board committees; salaries levels of senior management and Executive Directors; a list of policies and strategies upcoming for review, and; translated Project Summary Documents (PSDs).

However, despite these improvements in document disclosure, the draft PIP fails to embed a system at the EBRD that would effectively operationalize a presumption of disclosure. Instead, the document operates as a publication list, that is, it outlines which documents the Bank will post on its website and does not address the public's right to access a larger array of information from EBRD.

¹ In the draft PIP, the EBRD acknowledges recommendations of the G22 Working Group on Transparency and Accountability: "Safeguarding the business approach to implementing the mandate...will take into account the recommendations of the G-22 Working Group on Transparency and Accountability". See paragraph 1.5 of EBRD's draft Public Information Policy.

² Report of the Working Group on Transparency and Accountability (October 1998), p. 1.

³ *ibid*, p. 28.

The Global Transparency Initiative (GTI) believes the people have a right to information from public institutions and a right to participate in the development policies and projects that affect their lives. The following comments are based on the GTI's Charter of Transparency Principles for International Financial Institutions⁴ and, if adopted, would make drastic improvements towards openness and accountability at the EBRD.

1. Providing for a true presumption of disclosure

The EBRD's draft PIP states in paragraph 1.1 that it is guided by a presumption of disclosure whereby information will be disclosed, "in the absence of a compelling reason for confidentiality." This suggests that, upon request, information will be provided absent an overriding confidentiality interest. In practice, however, the draft PIP fails to provide for proper implementation of this presumption and, instead, focuses only on providing a list of which documents will be disclosed and when.

A true presumption of disclosure, based on system for responding to requests for information, requires that the following be put in place: (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 draft Charter for IFI Transparency, available on the website of the Global Transparency Initiative.

Such a system provides for the efficient processing of information requests and will improve not only the EBRD's effectiveness in disclosing information but also its reputation as a transparent and accountable institution. Furthermore, other IFIs are increasingly moving toward putting in place such systems. It will be a significant failure of this policy review process if the EBRD does not do more to ensure that its disclosure policy is based on a proper presumption of disclosure.

Process guarantees: Currently, the draft PIP does not offer any guidance whatsoever on the manner in which information requests are to be processed. Indeed, although it lists a number of documents to be disclosed proactively, it would seem that the draft PIP does not seriously envisage request-driven access. As such, it does not provide for a true presumption of disclosure. In particular, it does not specify **where** information requests should be sent, what **form** or **language** such requests should be in, the **timelines** within which the EBRD must respond to an information request, or minimum requirements regarding the content of the **response** to information requests, for example that they must be in writing and state the exception being relied upon in case of a refusal of access.

The lack of process guarantees is not only confusing for those outside the Bank seeking information but also means that no guidance is provided to staff on how to handle information requests. It would be more efficient for the Bank to establish clear procedures for handling such requests rather than doing this on a case-by-case basis. Furthermore, specific rules would lead to more consistency in application of the PIP and facilitate reporting on implementation.

Recommendations regarding process guarantees (Section 6 of the draft PIP):

The PIP should:

- Identify where requests for information may be sent.

⁴ The draft GTI Charter of Transparency Principle for International Financial Institutions can be viewed at: www.ifitransparency.org.

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- Specify that information requests may be sent in writing by email, fax or regular post, and in either English or Russian. In addition, oral requests for information should be honored and the EBRD staff should assist those not fluent in English or Russian in formulating their requests.
 - Require that a confirmation of receipt be sent in writing to the requester within 5 working days.
 - Require that a response, positive or negative, be sent in writing to the requester as soon as possible or within 20 working days (which may be extended by another 10 working days for requests for large amounts of information).
 - Require that the response to an information request either provide the information requested or give reasons as to why disclosure is being refused, citing specific PIP disclosure exceptions. The response should also indicate all appeals options open to the requester.

Exceptions: The PIP should provide for a clear, narrow and exclusive list of exceptions to the right of access, as this is an essential component to any disclosure system based on a presumption of disclosure. Each exception should be subject to a specific **harm test** so that requested information must be provided unless disclosure poses a serious risk of *harm* to a legitimate interest listed in the PIP, such as privacy or the competitive position of a business sponsor.

Many of the exceptions in the draft PIP do not provide for a harm test, instead it lists broad categories of exempt information regardless of any risk of harm. These include, among others, documents “intended for internal purposes”, “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 or when the originator has requested that its release be restricted,” and “financial, business or proprietary information of private entities.” None of these require any proof that disclosure would be likely to harm the protected interests and, together, could be read as covering practically all information submitted to the Bank by public or private sector project sponsors, as well as practically all internally generated information.

Exceptions should be assessed at the **time of the request**, not as categories. For instance, some information related to procurement is commercially sensitive only for a certain time, after which it should be publicly available.

Where there is **some confidential information** in a document, and this is reasonably severable from the rest of the document, the non-confidential portion should be disclosed in redacted form.

Finally, the regime of exceptions should be subject to a **public interest override** so that, where relevant and considering all of the circumstances, information will be released despite a risk of harm to a protected interest, where this serves the overall public interest. This might be the case, for example, where otherwise private information disclosed a severe environmental risk or evidence of corruption.

Recommendations regarding exceptions (Section 7 of the draft PIP):

- Exceptions should be drafted as clearly and narrowly as possible.
- All exceptions should be reviewed to ensure that they apply only where disclosure poses a serious risk of harm to a legitimate secrecy interest.
- If only part of a document is confidential, the confidential information should be redacted and the rest of the document publicly released wherever possible.
- Confidentiality should be assessed at the time of a request; for example, for time-bound or deliberative processes, information will normally be subject to disclosure following the expiration of that process.
- A public interest override, providing for the release of information where this is in the overall public benefit, should be incorporated into the PIP.

Right to appeal: Often, requesters will not agree with the EBRD's assessment that information is covered by an exception in the PIP. Mistakes can be made and, especially where the requested information relates to a visible, risky investment, staff may have vested interests or biases relating to the assessment of confidentiality. Ultimately, a completely internal process cannot be fully free of conflicts of interest.

As a result, requesters should have the right to appeal refusals to disclose. Ideally, there should be two levels of appeal, first to a more senior management group within the institution and, second, to an independent mechanism that can review the case and issue an opinion on the application of disclosure policy exceptions and the public's interest in disclosure.

Currently, the draft PIP states, at paragraph 6.1 : "The Secretary General, assisted as necessary by the General Counsel and other Members of the Executive Committee, will oversee and verify compliance with the policy." This constitutes an abbreviated form of the first level of appeal noted above. It should be expanded significantly to make it clear that individuals may appeal any refusal to provide information directly to the Secretary General and to provide for procedures (including timelines) for processing such appeals.

The PIP should also provide for a right to appeal from the Secretary General to an independent administrative body. Individuals may appeal refusals to disclose information by the European Investment Bank to the European Ombudsman, for example. At the national level, in countries with freedom of information laws, citizens are often able to appeal non-disclosure decisions to independent administrative bodies and from there to the courts. The draft PIP notes, in paragraph 6.5, the role of the Independent Recourse Mechanism (IRM) in applying Bank policies, including potentially the PIP. However, that same paragraph notes some of the limitations of the process, namely that it is limited to groups and, furthermore, to groups which are directly affected by a Bank-financed project. This is inappropriate in the context of information appeals which, furthermore, require different procedures than the examination of other policy breaches, in particular, so that they are rapid and cost-effective.

Recommendations regarding the right to appeal (paragraphs 6.1 and 6.5 of draft PIP):

- The role of the Secretary General, along with the General Counsel and other senior management officials, in processing information appeals outlined in paragraph 6.1, should be clarified and further detail should be provided so that this constitutes a proper internal appeals panel for disclosure policy concerns.
- The EBRD should either review and amend the rules relating to the the IRM with a view to rendering them compatible with the requirements of an information appeals body or constitute a separate independent body to undertake this task.

2. Private Sector Operations and Lending to Financial Intermediaries

In FY 2004, the EBRD invested over 3.4 billion EUR in private sector operations, around 83 percent of its total investments. Furthermore, about 2.1 billion EUR of that was lending to Financial Intermediaries (FIs).⁵ Despite high concentrations in these types of lending, this area of the Bank's operations is particularly secretive.

⁵ EBRD 2004 Annual Report. These figures may not be exact, as the totals are calculated from the "Projects Signed in 2004" section of the Annual Report and have not been officially disaggregated by the EBRD from its reported total investments of 4.1 billion EUR.

The EBRD should protect legitimate business confidentiality but it must balance this need with the public's right to know and to participate in decision-making processes. In its draft PIP, the EBRD commits to take into account the openness principles outlined by the G22 Working Group on Transparency and Accountability. Among other things, the Working Group suggests:

Poor disclosure practices in the private sector are attributable in part to the absence of principles and standards to guide the compilation and reporting of information.

[T]ransparency helps to inform market expectations, thereby helping to stabilise markets during periods of uncertainty and also contributing to the effectiveness of announced policies.

Member attached particular importance to enhancing the relevance, reliability, comparability and understandability of information disclosure by the private sector.⁶

A number of multilateral development banks are beginning to explore how to provide additional information on private sector operations and lending to Financial Intermediaries. The International Finance Corporation (IFC), for example, recently completed a review of its disclosure and safeguard policies. The IFC's new requirements mandate that FI sub-projects which have significant social and environmental impacts, meet disclosure requirements outlined in IFC Performance Standards.

In addition, both the IFC and Asian Development Bank (ADB) now require that private sector project sponsors report on social and environmental mitigation during project implementation. The IFC requires at least an annual public report on the sponsor's "Action Plan" and the ADB mandates the disclosure of Environmental and Social Monitoring Reports. The ADB also requires the disclosure of a summary of its Board Report on private sector operations, a significant step towards openness around these operations.

At a minimum, the PIP should meet the requirements already in place at these sister institutions. Additionally, in line with the G22 principles, the EBRD should strive to set new, innovative openness standards for private sector operations. One area of particular importance is around the disclosure of the most detailed project information. Board Reports include important information on "the results of environmental due diligence on proposed projects, applicable project requirements and the results of the public consultation process."⁷ While the EBRD allows for the disclosure of Board Reports for public sector projects, private sector Board Reports are confidential. The EBRD should set a new standard in this area, going beyond the ADB's standard of disclosing Board Report summaries, and require the disclosure of private sector project Board Reports, with confidential information redacted.

Recommendations regarding private sector operations and FI lending (Section 4 of the draft PIP):

The PIP should:

- Require the disclosure of the final draft Board Report for private sector operations when it is circulated to the Board.
- Require the disclosure of the final Board Report for private sector operations after approval.
- Require the disclosure of a list of FI sub-projects on the EBRD's website.
- Meet IFC requirements of disclosing Social and Environmental Assessment information for high-impact (Category A) FI sub-projects.

⁶ Report of the Working Group on Transparency and Accountability (October 1998), pp. iv, v and ii respectively.

⁷ EBRD Environmental Procedures, p. 5.

3. Routine Disclosure of Project Information: Timely and Ongoing

Maintaining balance between a commitment to its clients and a responsibility to stakeholders affected by Bank-financed projects requires that the EBRD not only safeguard its business approach but also that it promotes public access to information and participation in its operations. Again, the G22 Working Group on Transparency and Accountability states: “Transparency at the MDBs facilitates increased public participation in the design and implementation of development projects and thereby contributes to the local acceptance and ultimate success of projects.”⁸ The findings of the Working Group highlight that successful Bank projects ultimately depend on both timely disclosure of and continued public access to information produced throughout the life of a project.

In regards to the draft PIP, we welcome the Bank’s proposal to translate Project Summary Documents (PSDs) into relevant national languages and to disclose certain Project Evaluation Department (EvD) documents, because the release of this information represents an important step towards encouraging the continued and informed participation of stakeholders during two phases of project operations. However, the disclosure of PSDs and EvD evaluations only represents select stages of the project cycle – project preparation and evaluation – and large gaps remain regarding information produced during other phases of the project cycle.

Under the draft PIP, the majority of information produced during the project cycle remains confidential. In order to balance more fully its dual mandates, the EBRD should continually provide project information to stakeholders both before and after PSDs are released, and prior to the project completion evaluations of EvD. As such, the PIP should be expanded to include disclosure requirements for documents produced *throughout* the project cycle, including the initial phases of project preparation and appraisal, and the latter stages of implementation and completion.

While the disclosure of relevant environmental and social documents is covered under the scope of the Bank’s Environmental Policy, the Information Policy should be revised to include these recommendations, making it a comprehensive guide to disclosure within the EBRD.

To effectively engage with EBRD-financed projects, citizens need to have access to environmental and social documents under consideration during the project’s early appraisal phase. While we welcome the disclosure of PSDs for public sector projects “as soon as possible after the project has passed its Initial Review by Bank management,”⁹ private sector PSDs are disclosed only 30 days prior to Board consideration.

In addition to the PSD, the EBRD should consider the disclosure of the most detailed project information prior to as well as immediately after approval. As stated above, the project Board Report contains “the results of environmental due diligence on proposed projects, applicable project requirements and the results of the public consultation process.” If the public is expected to participate in the development of a project, they must have full access to project information, before and after it is finalized.

Once a project has been approved by the Board, it is important for the Bank to inform stakeholders of project developments via the disclosure of monitoring and implementation reports. As noted by the EBRD, “The Bank is looking for new ways to increase the amount of environmental information provided to interested parties during project implementation and monitoring.”¹⁰ The draft PIP should require the disclosure of monitoring and implementation reports prepared by the Project Sponsors. These

⁸ Report of the Working Group on Transparency and Accountability (October 1998), p. v.

⁹ Draft EBRD Public Information Policy (2006), p. 8,

¹⁰ EBRD Environmental Policy (2003), p18.

recommendations are in line with the findings of the G22 Working Group: “[Project] evaluations should be published so as to raise public awareness and understanding of IFIs’ activities and to hold IFIs publicly accountable.”¹¹

Recommendations regarding routine disclosure of project information (Section 4 of the draft PIP):

- The EBRD should publicly disclose initial discussion papers at the time such documents are produced, including the Concept Review Memorandum (CRM), Environmental Screening Memorandum, draft Environmental Summaries (ES), and Initial Environmental Examinations.
- The Bank should disclose public and private sector PSDs immediately after Initial Review and not less than 60 days prior to Board review and update these PSDs on a regular basis throughout project preparation and implementation.
- In addition to PSDs, the PIP should include disclosure requirements for other documents produced following Initial Review, including Updated ESs, Environmental Action Plans and Term Sheets, and Final Review Memorandum (FRM).
- The EBRD should require the disclosure of final draft Board Reports at the time that they are circulated to the Board for review.
- The PIP should recommend the disclosure of project implementation reports, including Annual Environmental Reports, Periodic Environmental Audits and Exit Audits.
- The EBRD should require the disclosure of monitoring and implementation reports prepared by the Project Sponsors through the life of the project.

4. Transparency for Effective and Informed Consultation

Timely and continuous access to information is key to the formulation of successful strategies and policies. Effective consultations require that stakeholders be notified in advance of plans to develop or review an existing strategy. To this extent, we commend the Bank for adding requirements to the draft PIP for disclosing “a comprehensive list of policies and strategies scheduled for development or review in the year ahead.”¹² This requirement should be accompanied by procedures and a timeline for the review or development of the policy or strategy. With this information, stakeholders will be in a better position to recommend ways in which the review could be improved, assess the value of contributing their time and resources to the review, and allow themselves ample time to prepare thoughtful input and participate in key discussions.

Disclosing draft policies and strategies is also key to an effective consultation process. Having draft documents available with sufficient time in which to comment on them allows stakeholders to provide critical and constructive feedback for the Bank’s consideration. We welcome the recommendation in the draft PIP to require the disclosure of draft country strategies for a 30-day public comment period. While stakeholders need access to draft policies and strategies to participate in their development, these documents need to be provided in a manner and language which enables stakeholders to engage effectively in the consultation process. As such, the PIP should require the disclosure of draft country strategies and sectoral policies in relevant national languages.

For truly inclusive consultations, stakeholders should be informed of how their input will be taken into account and which recommendations have been accepted and why (or why not). Stakeholders cannot be expected to devote considerable effort and resources to participate in strategy and policy formulation without having some confidence their input is acknowledged and taken seriously. The draft PIP does not

¹¹ Report of the Working Group on Transparency and Accountability (October 1998), p. 25.

¹² EBRD draft Public Information Policy (2006), paragraph 3.3.

require the disclosure of a second (final) draft policy or strategy, which reflects how external comments have been incorporated, prior to Board approval. Nor does it recommend that the EBRD publicly post all external comments received during the review process, which is a common practice at other IFIs. Furthermore, while the EBRD recommends the disclosure of Management's response to comments received after Board approval, this should be available to the public prior to the Board meeting.

Recommendations regarding transparency in policy and strategy formulation (Section 3 of the draft PIP):

- For each policy or strategy review, including reviews of Country Strategies, the EBRD should disclose a consultation plan that includes procedures and a timeline for the review.
- The PIP should require the disclosure of draft country strategies and sectoral policies in, at least, English and Russian.
- The EBRD should post on its website all external comments received during the review of a policy or strategy.
- The EBRD should disclose the summary of Management's response to external comments received on draft policies and strategies *prior* to Board approval.
- Final draft policies and strategies (the draft that is sent to the Board for approval) should be disclosed at the same time they are circulated to the Board.

5. Additional Comments

Schedule of forthcoming Board meetings (paragraph 2.1 of the draft PIP)

Paragraph 2.1 of the draft PIP recommends the disclosure of a calendar of upcoming Board discussions around Country Strategies, Sector Policies and Projects. We understand that the Bank is already disclosing some information related to the Board schedule however, we hope to see this calendar significantly improved. Currently, the only information publicly available is the month for the discussion of a particular country strategy and the agenda of the most recently past Board meeting. Other MDBs, such as the ADB, disclose monthly or rolling calendars with the agendas of upcoming Board discussions.

- All strategies, policies and projects under consideration at the EBRD should be listed on at least a three-week rolling calendar. This calendar should be archived on the Bank's website so the public can review the agendas of past Board meetings.

Transparency of Board discussions (paragraph 2.2 of the draft PIP)

We welcome the proposal to disclose minutes of Board meetings, as outlined in paragraph 2.2 of the draft PIP. While these minutes provide a legal record of the decisions taken, they do not capture the thrust of the discussion and not all minutes include actual voting records. Citizens should be able to understand how they have been represented at the Board and whether or how issues that concern them have been addressed. For this reason, summaries and transcripts of Board discussions should be published in accordance with the following:

- The Board minutes should include an actual record of voting.
- Within 15 days of the meeting, summaries of Board discussions should be published.
- Within 30 days of the meeting, transcripts of Board discussions should be published.

Project Evaluation Department (EvD) Documents (paragraph 5.4 of the draft PIP)

We appreciate the proposal in paragraph 5.4 of the draft PIP to disclose certain EvD documents, including Operational Performance and Evaluation Reviews (OPER), because from these important assessments the Bank "derives lessons to be applied to future projects...[and] also considers the adequacy with which the

Bank's public consultation requirements have been implemented."¹³ However, as currently proposed, only summary OPERs will be made available and broad exceptions to their disclosure exist - "where project particulars in high profile projects cannot be easily disguised in order to preserve confidentiality."¹⁴

- EvD independent assessments and OPER should be disclosed in their entirety upon their submission to Management. Further, provisions in the draft PIP for confidentiality of OPER should be explicated to indicate the precise harm disclosure of these evaluations would cause.

Disclosure Requirements for Investment Contracts

As currently written, the draft EBRD PIP fails to incorporate best international practice by not requiring its clients to publicly disclose investment contracts in the natural resource sectors (e.g., mining, oil, gas, water, forestry). Investment contracts, such as concession agreements and production sharing agreements, contain the all-important conditions that determine government revenues to be generated by the development of natural resources.

In addition, investment contracts often override host countries' environmental and social laws and policies, and can undercut a country's ability to meet international agreements including those intended to protect the environment and human rights. Thus, these contracts can at times undermine the EBRD's ability to meet its mandated environmental, social, human rights, and rule of law obligations.

In support of this proposal, the IMF has determined that natural resource sector contract transparency is best international practice. In so doing, they have debunked the commonly held myth that the concealment of contracts is necessary to protect business confidential information. The IMF stated:

An often expressed concern with regard to open tendering processes is that both government and companies may lose competitive advantage by public disclosure of winning contracts. For reasons of commercial confidentiality, therefore, negotiated contracts with nondisclosure clauses are the practice in a number of countries. The reason usually advanced by governments (and to some extent by companies) is that in case of disclosure their bargaining power for future contracts would be eroded. In practice, however, the contract terms are likely to be widely known within the industry soon after signing. Little by way of strategic advantage thus seems to be lost through publication of contracts. Indeed, it could be argued that the obligation to publish contracts should in fact strengthen the hand of the government in negotiations, since it has to disclose the outcome to the legislature and the general public. Where conditions do not permit disclosure of contracts or individual company payments, an option could be the disclosure of individual company payments to an independent third party (e.g., the aggregator approach as suggested by the EITI).¹⁵

Transparency of contracts is a critical first step towards improving governance and towards the responsible management of natural resources. Without comprehensive contract disclosure requirements in EBRD supported natural resource projects, it is very difficult for citizens to hold these projects and ultimately their governments accountable. The required disclosure of these contracts and the analysis of them through EBRD's project due diligence and public comments should therefore be a requirement of the EBRD Public Information Policy.

- The EBRD PIP should clearly state that it requires the public disclosure of all types of investment contracts, including, inter alia: between host governments and companies (e.g. Concession

¹³ EBRD Environmental Procedures (2003), section 3.7.

¹⁴ EBRD draft Public Information Policy (2006), paragraph 5.4.

¹⁵ International Monetary Fund, Guide on Resource Revenue Transparency (June 2005).


Agreements, Host Government Agreements, Production Sharing Agreements, Power Purchasing Agreements) and between governments (e.g. Inter-Governmental Agreements).

Conclusion

With this information policy review, the EBRD is in a unique position to push the envelope on transparency reforms and set new standards for other IFIs to follow. Research and practice continue to demonstrate that openness is not only the right thing to do, but it also makes good business sense. Transparency reduces opportunities for corruption and facilitates the successfulness of sustainable projects and investments.

The recommendations above address issues regarding the system of disclosure at the EBRD, regular publication of project information, informed public consultation around policy and strategy development, transparency of the Board of Directors, disclosure of investment contracts, among other things. While we understand that these recommendations are numerous, we cannot emphasize enough their importance for enabling a true presumption of disclosure at the Bank.

Thank you again for this opportunity to comment and we look forward to your response.



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Annex 1: Summary of Recommendations

Process Guarantees (Section 6 of the draft PIP):

The PIP should:

- Identify where requests for information may be sent.
- Specify that information requests may be sent in writing by email, fax or regular post, and in either English or Russian. In addition, oral requests for information should be honored and the EBRD staff should assist those not fluent in English or Russian in formulating their requests.
- Require that a confirmation of receipt be sent in writing to the requester within 2 working days.
- Require that a response, positive or negative, be sent in writing to the requester as soon as possible or within 7 working days (which may be extended by another 7 working days for requests for large amounts of information).
- Require that the response to an information request either provide the information requested or give reasons as to why disclosure is being refused, citing specific PIP disclosure exceptions. The response should also indicate all appeals options open to the requester.

Exceptions (Section 7 of the draft PIP):

- Exceptions should be drafted as clearly and narrowly as possible.
- All exceptions should be reviewed to ensure that they apply only where disclosure poses a serious risk of harm to a legitimate secrecy interest.
- If only part of a document is confidential, the confidential information should be redacted and the rest of the document publicly released wherever possible.
- Confidentiality should be assessed at the time of a request; for example, for time-bound or deliberative processes, information will normally be subject to disclosure following the expiration of that process.
- A public interest override, providing for the release of information where this is in the overall public benefit, should be incorporated into the PIP.

Right to appeal (paragraphs 6.1 and 6.5 of draft PIP):

- The role of the Secretary General, along with the General Counsel and other senior management officials, in processing information appeals, outlined in paragraph 6.1, should be clarified and further detail should be provided so that this constitutes a proper internal appeals panel for disclosure policy concerns.
- The EBRD should either review and amend the rules relating to the the IRM with a view to rendering them compatible with the requirements of an information appeals body or constitute a separate independent body to undertake this task.

Private sector operations and FI lending (Section 4 of the draft PIP):

The PIP should:

- Require the disclosure of the final draft Board Report for private sector operations when it is circulated to the Board.
- Require the disclosure of the final Board Report for private sector operations after approval.
- Require the disclosure of a list of FI sub-projects.
- Meet IFC requirements of applying Social and Environmental Assessment transparency standards to high-impact (Category A) FI sub-projects, which should include the disclosure of an EA report for consultation during project preparation.

Routine disclosure of project information (Section 4 of the draft PIP):

- The EBRD should publicly disclose initial discussion papers at the time such documents are produced, including the Concept Review Memorandum (CRM), Environmental Screening Memorandum, draft Environmental Summaries (ES), and Initial Environmental Examinations.
- The Bank should disclose public and private sector PSDs immediately after Initial Review and not less than 60 days prior to Board review and update these PSDs on a regular basis throughout project preparation and implementation.
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- Final draft policies and strategies (the draft that is sent to the Board for approval) should be disclosed at the same time they are circulated to the Board.

Schedule of forthcoming Board meetings (paragraph 2.1 of the draft PIP):

- All strategies, policies and projects under consideration at the EBRD should be listed on at least a three-week rolling calendar. This calendar should be archived on the Bank's website so the public can review the agendas of past Board meetings.

Transparency of Board discussions (paragraph 2.2 of the draft PIP):

- The Board minutes should include an actual record of voting.
- Within 15 days of the meeting, summaries of Board discussions should be published.
- Within 30 days of the meeting, transcripts of Board discussions should be published.

Project Evaluation Department (EvD) Documents (paragraph 5.4 of the draft PIP):

- EvD independent assessments and OPER should be disclosed in their entirety upon their submission to Management. Further, provisions in the draft PIP for confidentiality of OPER should be explicated to indicate the precise harm disclosure of these evaluations would cause.

Disclosure Requirements for Investment Contracts:

- The EBRD PIP should clearly state that it requires the public disclosure of all types of investment contracts, including, inter alia: between host governments and companies (e.g. Concession Agreements, Host Government Agreements, Production Sharing Agreements, Power Purchasing Agreements) and between governments (e.g. Inter-Governmental Agreements).

The Global Transparency Initiative (GTI) is a network of civil society organisations promoting openness in the International Financial Institutions (IFIs), such as the World Bank, the IMF, the European Investment Bank and Regional Development Banks.

The GTI believes the people have a right to information from public institutions and a right to participate in the development policies and projects that affect their lives. In IFI-supported activities, transparency can help reduce corruption; identify potential social, environmental and economic risks and benefits; and avoid damaging communities and sensitive ecosystems.

The GTI brings together two communities of activists and experts from around the world - one, those groups working towards full accountability in the use of public power vested in the IFIs; the other, groups promoting the right to access to information at the nation-state level.

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