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Bankwatch suggestions for improvement of the EBRD Public Information Policy

February 2002

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"... the Bank will redouble its effort to promote good governance..."

EBRD 2000 Annual Report

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Introduction

CEE Bankwatch Network (Bankwatch) has been following the development of the EBRD Public Information Policy for a long time, and we see this Policy as one of the key documents that could help to increase the transparency and accountability of this institution, which is based on tax payer funding.

The Public Information Policy that was adopted in 2000 made several important steps towards greater transparency of the EBRD - e.g. consultation and release of EBRD Sectoral Policies. Nevertheless, there are still a number of areas where the EBRD lags behind good practices and standards that are used in the shareholder countries or in other international financial institutions, especially on the level of releasing environmental information about concrete projects and public consultation.

Based on our experiences with previous consultation processes, we are submitting our suggestions to the EBRD, before the Bank staff has prepared its draft document for consultation. We hope that the EBRD will consider the following document as our submission to the consultative process, with the goal of helping the EBRD staff prepare a draft Public Information Policy that reflects the needs of the public in EBRD countries of operation.

We also want to avoid a situation such as when some of the issues raised by NGOs were omitted both in the Public Comments on PIP and Staff Responses document as well as in the Policy. We hope that the EBRD will consider those issues this time.

Summary of the issues raised

For NGOs and communities, information that relates to individual projects which affect them is crucial. In this paper, Bankwatch has raised a number of issues where we see that the current Public Information Policy does not reflect local needs. These include:

- release of the Environmental Impact Assessments in the local language by Project Sponsors, and making the EIA available on www pages,
- release of the Environmental Analyses for Category B projects by Project Sponsors,
- release of all Project Summary Documents (PSDs) with no exception,
- equalisation of the periods for releasing information for public and private sector projects - as regards Environmental Impact Assessments as well as Project Summary Documents,
- release of oil spill and other emergency response plans as part of the EIA,
- inclusion of a list of factual and technical documents to the PSDs,
- release of the environmental section of the Final Review Memorandum or Environmental Review Memorandum as the part of PSDs,
- availability of project implementation documents.

The release of the Environmental Procedures as well as the list of publicly available documents would also increase the quality of public participation in projects funded by the EBRD.

There are other issues that are related to the general transparency of the EBRD as a publicly funded institution. These include:

- release of Expanded Annual Monitoring Reports, Operation Performance Evaluation Report and other evaluation documents,
- clarification of procedures for the release of information, including the possibility of an independent review of refusals,
- earlier release of the Staff response to comments on the policies,
- updates of the planning activities by the Board.

The release of Board Minutes is also closely linked with Public Information Policy.

Project related information

We have based our suggestions regarding project related information on following principles, which we believe that the EBRD should also follow:

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

Release of Environmental Analyses

Release of Environmental Analysis documents is one of the issues that was omitted by the staff for inclusion in the collection of Public Comments on PIP and Staff Responses and later, not taken into consideration within the Policy.

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

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

This can be done through the internet, BIC and the local offices as Bankwatch proposed in 2000, when our organisation suggested the following procedure: Environmental Analyses "should be available to be viewed in the Bank's Business Information Centre in London, as well as posted in a timely way on the EBRD website (or, alternatively, the EBRD website should provide a link to the website where the EA can be found). A copy of the EA and the Executive Summary should also be made available in the EBRD Resident Office in the country of the project's location."

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

¹ Environmental Considerations in Bank Operations, Operational Procedures, Para 4, ADB, 1997

² From "Disclosure of Environmental and Social Operational Documents,
<http://www.worldbank.org/about/whatwedo/socceddisclosure.pdf>

Oil Spill and Response Plans

When Bankwatch and other NGOs requested a release of the Oil Spill Response Plan and other emergency response plans as part of the EIA, Staff responded quite positively: " EBRD recognises the importance and interest of the public, particularly those living near a facility, in wanting assurances on the safety and security of the operations, including transport of materials and waste to and from the facility." But the final version of the PIP does not contain any provisions that demand the release of emergency plans by the project sponsor.

The bitter experience of projects such as the Kuntor Gold Mines illustrates the importance of the availability of such emergency plans to the public. It is evident that better information, and more effective communication between companies, local and national authorities and potentially affected citizens would reduce the health, social, environmental and economic impacts of such accidents.

Bankwatch understand some of the concerns about the sensitive information that could be part of these documents. But potentially affected people are not interested in this sensitive information, they are interested only in issues such as a early warning systems, evacuation plans, health protection and others.

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

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

Environment Impact Assessments in local languages

The release of EIAs in local languages is another issue that is of great concern to affected people, communities and NGOs. In April 2001, more than 190 non-governmental organisations in 20 countries wrote in their national languages, urging EBRD directors to change the current policy that allows the project sponsor to not release environmental and other documents in the local language.

Later, the Parliamentary Assembly of the Council of Europe that "serves as parliamentary forum" for the EBRD, adopted a resolution in support of the Eastern European NGOs' demand to release documents in the local language. Resolution 1254 (2001), which was adopted during the EBRD President's visit to the Council of Europe, states "...the Assembly encourages the Bank to modify its information policy so as to issue wherever possible project related information in the national language or languages of the countries concerned, facilitate public access to information regarding projects, and consider the establishment of a body to hear appeals and grievances from the public."

A review of the EBRD Review of the Implementation of the Information Policy shows that two of the seven projects which required an EIA in 2000 did not have a translation of the full EIA document in the local language. The Review of the Implementation claims that "there were no requests for more information or additional translation" in those two cases. From the document, it is evident that the Review refers to two projects in Bulgaria. A letter from CEIE reacting to the Review states that a request for the EIA in Bulgarian was made, as well as for additional information.³ This situation also highlights the confusing situation for the Bulgarian public, where Ministry of Environment and Waters had already closed consultation on its own EIA prepared for these projects, and later the new EIA documents were released under different guidelines.

³ Letter from the Centre for Environmental Information and Education, January 11, 2002

But even if there are no additional requests, one can hardly expect that the public will automatically ask for more information, especially if the Environmental Procedures of Information Policy are also not available in the national languages.

Additionally, the "voluntary" approach, in which translation depends on the decision of the company based on its consultation with EBRD staff, does not necessarily lead to the release of full EIAs, as release depends on individual bank staff interpretation. "Frontera relied on advice from the EBRD to translate only the Executive Summary into Azerbaijani."⁴

We believe that the most crucial issue when releasing documents to locally affected people is releasing them in an understandable form, which means in their local language. When ensured this, the local people can contribute to the consultation process with their comments and guarantee the proper development of the project in the most harmless yet beneficial way.

Bankwatch proposal: The EBRD should require the release of full Environmental Impact Assessments in local languages for all projects.

Release of Environmental Impact Assessments on the www sites

The Staff Response to NGO comments argued that it is possible to create a link to the sponsors' websites and they "strongly encourage sponsors to put EIAs on their websites." But the Review found that (in spite of the recommendations of its staff) none of the seven EIAs was put on the internet.

After the completion of the Review, the first EIA was released on the internet. However, this is far from the ideal situation. One of the reasons given in the Review is that "the project sponsors did not have Web sites and did not want to establish one for this limited purpose." We fully understand that smaller companies do not want to go through the work of setting up an internet site for the sole purpose of public consultation on one project, but sponsors who do have existing websites may make no such argument. Further, the EBRD has already demonstrated that it is able to release Executive Summaries of EIAs on www.ebrd.com and therefore there should be no obstacles, technical or otherwise, to releasing the full EIA document.

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

Release of the Environmental Impact Assessment

We strongly suggest that the release of the EIA be 120 days before Board Approval, no matter the type of project, public or private. The Asian Development Bank does not make any distinction between the release of EIAs for public and private sector projects, and according to their policy: "For all projects under environment category A, environmental impact assessment documents should be submitted to the Board at least 120 days before it considers the project."⁵ Thus the EIA is released for 120 days before Board without any difference in the release period.

Staff, in the response to public comments, did not give any arguments that would demonstrate a need for a different consultation period for private and public sector projects. The review of the EBRD Review of the Implementation of the Information Policy shows that of the seven projects that were started in 2000, only one would not have complied with the 120 days period.

⁴ Terry Thoem on the ISAR's Caspian Program Workshop, January 24, 2002

Finally, if the environment is affected it makes no difference whether the project is private or public.

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

Release of Project Summary Documents

According to the Review of the policy, 30 out of 73 of private sector projects and 4 out of 28 public sector projects did not comply with the procedure for the release of Project Summary Documents. Another 22 private sector Project Summary Documents were not released because of confidentiality reasons. This means that stakeholders and affected communities were not able to receive information regarding more than half of the projects.

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

The provision of the EBRD Policy for confidentiality of Project Summary Documents is not necessary - the example of the IFC, which operates in a larger number of countries than the EBRD, shows that the confidentiality clause is not necessary and should be removed from the policy.

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

Bankwatch proposal: The EBRD should release PSDs 60 days prior to Board approval without any exception. There should be no distinction between public and private regarding the release of PSDs.

List of factual and technical documents related to project preparation

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

If the EBRD wants to be serious about consulting affected communities and providing people with the opportunity to have some input in decision-making, then they must provide information at a point in the process when decisions are still being made. By allowing people to know what information does and does not exist on a given project, the affected communities are in a better position to know what information they should be asking for. Currently, people don't ask for relevant documents or information because they aren't even allowed to know that they exist.

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

⁵ From the Asian Development Bank web site, Operation manual- Environmental Considerations in Bank Operations, <http://www.adb.org/Documents/Manuals/Operations/om20.asp>, release to the Board means that documents should also be available to the public.

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

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

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

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

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

Information about project implementation

Generally, there is no information about project implementation and operation available - unless the project sponsors are willing to release such information or they are required to do so by some national legislation. EBRD staff have a very limited amount of time to monitor the implementation of a loan and increased disclosure would allow stakeholders to warn the EBRD when the actual impacts differ from perceived impacts.

Bankwatch proposal: Information about project implementation and its environmental, health and social impact should be made publicly available.

Information that is not related to specific projects

Environmental Procedures and list of available public documents

Several of the projects in which the EBRD was involved over the last couple of years (e.g. Frontera Resources, Tessaloniki - Skopje Pipeline) show that there have been misunderstandings amongst the various stakeholders about the environmental procedures that apply to the project. We believe that such misunderstandings come from the simple fact that the Environmental Procedures are not available in local languages and they are not actively distributed to the interested parties.

In previous meetings, EBRD staff have expressed some concerns about the costs of such translation. We believe that doing the translations in the countries of operation will reduce these costs. In addition, the Environmental Procedures are not changed very often (the current procedures have been in place for seven years). As the Environmental Procedures are documents of a legal nature, we understand that they require official translations. We have therefore checked the cost of official translation in several countries

of operation, in order to give the EBRD a better estimation of the cost of such translations.

Country	Price	Source/Company
Bulgaria	EUR 4,1 per page (1800 characters)	GD, Sofia
Czech Republic	USD 11,3 per page (1800 characters)	Agentura Alfa, Prague
Hungary	USD 7,1 per 1000 characters	Bereczky, Budapest
Macedonia	USD 5 per standard page	Ruska Ilievska, Skopje
Poland	USD 7,5 per page (1125 characters)	3A-LINK, Krakow
Slovakia	USD 10,6 per page (1800 characters)	Global-Jazykovy Institut, Banska Bystrica

Also, the list of the documents that should be publicly available should be in national languages.

Bankwatch proposal: the Environmental Procedures, as well as the list of documents that should be available to public according the Public Information Policy, should be available in national languages.

Evaluation Documents

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

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

Citizens in the EBRD shareholding countries should have an opportunity to see how the EBRD uses the funding that originally comes from taxpayers, whether the projects are meeting the bank's objectives and whether the projects do not cause new social or environmental problems.

Bankwatch Proposal: The EBRD should disclose various Evaluation Documents.

Timelines for disclosure of information and reasons for refusal

In our experience, the EBRD in most cases reacts to requests for information within a reasonable time. Nevertheless, it would reduce confusion to the public in countries of operation, if there was a clear timeline for responses to requests for disclosure of information. We also believe that written reasons should be given for any refusal of information. This is not only necessary for appeal, but also because those who make the request have a right to know why their request has been refused.

Such procedures are the usual practice in most of the shareholding countries which have laws regarding access to information.

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

Independent Review of refusal to disclose information.

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

This process is recognised in most national laws regarding access to information law in the EBRD Shareholding countries. These laws provide for an appeal to an independent administrative body and/or the courts. For example, this principle is practised by the UNDP in its Public Information Disclosure Policy, which provides for the establishment of an Oversight Panel for appeals.

We believe that the EBRD should set up an independent body that would be able to review refusals to disclose information. One of the possibilities would be to include such a review as part of the Appeal and Compliance Mechanism, once it is set up by the EBRD.

Bankwatch Proposal: The EBRD should set up a procedure that will allow independent review of refusals to disclose information.

Staff response to the comments on policies

The release of the Summary of Comments and Staff Response to the comments made by stakeholders to the draft policies should be released prior to the consideration of the policy by the Board. The consultation about the Public Information Policy well demonstrates the need for such a provision. Several of the comments that were made by NGOs were omitted both in the policy as well as in the Summary of Comments and Staff Response. Therefore we believe that the staff response to the comments on policies should be released prior the consideration of the policy by the Board.

Bankwatch Proposal: The Summary of Comments and Staff Response should be disclosed to the public before the approval of the sectoral policies by the Board.

Update of the Board Schedules

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

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

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

Other Issues related to Public Information Policy

Board Minutes

The current closed nature of the Board of Directors meeting does not allow citizens to find out how they are being represented. Taxpayers are unable to determine if an Executive Director is promoting issues that are important, whether the country is supporting projects that are economic, social, environmental or otherwise. Similarly, the public is unable to determine if the Director is behaving in a way that is consistent with the laws of their country. Lack of transparency of the decisions of various International Financial Institutions has led over last few years to the increased frustration of the concerned public. Even we understand some of the reasons why the EBRD Board prefers to have closed meetings, but we believe that there are still good possibilities to increase public information.

The Board minutes, and especially the Record of Vote of the Board should be disclosed to the public in shareholding countries. It is Bankwatch's understanding that change cannot be made through the Public Information Policy, but would require a change in the Rules of Procedure of the Board of Directors. But as this issue is very closely linked with Public Information Policy, and it is the Board of Directors who can amend the Rules of Procedure of the board (by 2 / 3 majority of voting power), we are including the issue into this paper

We believe that both the Minutes of the Board and updates on the plans are issues that can help the EBRD increase the public trust in the institution.

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

This paper was prepared by CEE Bankwatch Network

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

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

The goals of the CEE Bankwatch Network are:

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