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EBRD DIRECT PROJECT LENDING ACCOUNTABILITY AND GOVERNANCE TOOLKIT

CRUDE ACCOUNTABILITY

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OVERVIEW

This toolkit is designed for civil society organizations that are impacted by EBRD funded projects or otherwise wish to engage with the European Bank for Reconstruction and Development to promote political and environmental accountability, transparency, and participatory practices in policy and lending operations. It is to be used as a resource guide, keeping in mind that policies, strategies, and institutions are often updated.

ABOUT THE EBRD

The European Bank for Reconstruction and Development was founded in 1991, to help build a new post-Soviet geopolitical landscape after the fall of the Soviet Union. The EBRD focuses on the private sector, and presents itself as an expert on transitions to market economies. The EBRD's shareholders include 65 countries from five continents plus the European Union and the European Investment Bank, and it currently operates in over 30 countries from central Europe, Central Asia, and the southern and eastern Mediterranean. In 2016, investments across 378 projects totaled Euro 9.4 billion. The official languages of the Bank are English, Russian, German and French.

Unlike other development banks, the EBRD has a unique mandate to promote good governance and democracy. Article 1 of the Agreement establishing the Bank states:

"In contributing to economic progress and reconstruction, the purpose of the Bank shall be to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economics.

ABOUT THE EBRD

The purpose of the Bank is to invest in countries that have demonstrated their commitment to democracy and pluralism. Investments in countries that do not enshrine these values could be interpreted as violations of Article 1 of the Agreement.

Article 1 may significantly influence country strategies, which lay out the investment priorities for 4 years.

Like other development banks, the EBRD has a set of policies and standards outlining its social and environmental management systems. Policies and Performance Requirements are considered binding documents of the Bank, laying out responsibilities of the Bank and the borrowing client towards the environment and stakeholders in designing, implementing, and operating projects. This suite consists of the Environmental and Social Policy, the Performance Requirements and the Public Information Policy.

The latest reiterations of these documents were revised and approved in 2014. For an in-depth understanding of the language and directives of these policies, it is important to read them in their entirety. This guide outlines the basic principles of accountability relevant for interested stakeholders.

ENVIRONMENTAL AND SOCIAL POLICY

As a signatory to the European Principles of the Environment, the EBRD is committed to the EU principles, practices, and standards across its project portfolio, even when national legislation fails to meet the EU Principles on the Environment.

The language on adherence to international law in the ESP is not as strong as one might like. It says that the EBRD will not knowingly finance projects that contravene country obligations under international law, and will seek to structure projects with the guidance of the standards of international law. This puts the responsibility on stakeholders to inform the EBRD of country obligations under international law to ensure that the Bank follows them.

The EBRD is unique in that, as a result of its Article 1, it specifically addresses human rights. Paragraph 9 states that the Bank recognizes the clients' responsibility in respecting human rights, and cites the International Bill of Human Rights, UDHR and ILO Conventions.

The 2014 Environmental and Social Policy (ESP) was approved in May, 2014, and applies to all projects approved after November 7, 2014. Projects approved prior to November 7, 2014, fall under the 2008 ESP.

According to Paragraph 21, EBRD will not knowingly finance any investments that involve forced evictions. Again, the responsibility here is on stakeholders to assess and inform the Bank that forced evictions would take place. This approach also requires thorough, transparent and independent consultations to adequately understand community perceptions and impacts.

The Categorization system assesses projects based upon anticipated impacts and ability to mitigate those impacts.

CATEGORY A

Category A projects that “could result in potentially significant adverse future environmental and/or social impacts which, at the time of categorisation, cannot readily be identified or assessed, and which, therefore, require a formalized and participatory environmental and social impact assessment process.”

A list of indicative Category A projects is presented in Appendix 2 to the ESP. Extractive industries and large infrastructure projects are or should always be classified as Category A.

CATEGORY B

Category B project’s “potential adverse future environmental and/or social impacts are typically site-specific, and/or readily identified and addressed through mitigation measures.” Environmental and social appraisal measures are determined on a case by case basis. Transportation of hydrocarbons is often classified as B as a way to get a project through the door with minimal environmental and social diligence.

CATEGORY C

Category C projects have little or no adverse environmental or social impacts.

FI PROJECTS

The financing structure of such projects involves the provision of funds through financial intermediaries (FI) whereby the FI undertakes the task of sub-project appraisal and monitoring. This is a way for the Bank to sometimes fund high risk projects with minimal transparency and accountability.

ENVIRONMENTAL AND SOCIAL

Each project undergoes a number of steps before and after approval.

As an initial step, all projects undergo project appraisal to understand if the project is feasible on a number of indicators, including social and environmental impacts. The social and environmental appraisal looks at

- 1) impacts associated with the project;
- 2) capacity of the client to implement the project;
- 3) associated infrastructure and facilities of the project, which are not financed by the Bank.

It is the responsibility of the client to provide the necessary information to the Bank for the appraisal. When a project is already underway at the time of EBRD proposal to invest, the Bank's appraisal will include a gap analysis against the ESP and performance requirements to understand what additional information or mitigation measures are needed before the project goes to the Board for approval.

The Board has the **discretion** to approve a project without the full social and environmental appraisal completed. In such cases, the Project Summary Document will include the description of such an approach and when the elements of the appraisal will take place.

If a project involves **existing facilities** that do not meet the performance requirements at the time of Board approval, the client would need to adopt a plan to upgrade those facilities to meet the ESP and Performance Requirements (PR) within an agreed timeframe.

In paragraph 39, EBRD confirms that project outcomes have to comply with the ESP and PRs even if outcomes are dependent on **third party** performance and activities. This is important because sometimes, as in the case of large oil and gas projects, the Bank may provide a loan to a minority shareholder in a large and complex structure, or finance only one aspect of a project.

At a minimum, **monitoring** requirements and commitments will include the Bank reviewing Annual Environmental and Social Reports on projects prepared by clients.

SOCIAL AND ENVIRONMENTAL PERFORMANCE REQUIREMENTS

In addition to the ESP, there are 10 Performance Requirements (PRs) that lay out specific social and environmental requisites for the client. They are:

- PR 1 - Assessment and Management of Environmental and Social Impacts and Issues
- PR 2 - Labour and Working Conditions
- PR 3 - Resource Efficiency, Pollution Prevention and Control
- PR 4 - Health and Safety
- PR 5 - Land Acquisition, Involuntary Resettlement and Economic Displacement
- PR 6 - Biodiversity Conservation and Sustainable Management of Living Natural Resources
- PR 7 - Indigenous Peoples
- PR 8 - Cultural Heritage
- PR 9 - Financial Intermediaries
- PR 10 - Information Disclosure and Stakeholder Engagement

Direct investment projects must meet performance requirements 1 to 8 and 10;

FI projects must meet performance requirements 2, 4 and 9.

This toolkit will discuss PR1 and PR10, but stakeholders should review the PRs for specific project impacts.

PERFORMANCE REQUIREMENT 1

ASSESSMENT AND MANAGEMENT OF ENVIRONMENTAL AND SOCIAL IMPACTS AND ISSUES

This PR explains the Bank's requirements of the client for the Environmental and Social Impact Assessment and Management Systems (ESMS) required for each category of projects.

Projects involving new facilities or activities should be designed to meet the PRs from the outset. Where the project involves existing facilities, or where the project does not meet the PRs from the outset, the client will be required to develop and implement an Environmental and Social Action Plan (ESAP) which includes time-bound compliance measures.

"The environmental and social assessment process will be based on recent information, including an accurate description and delineation of the project and the client's associated activities, and social and environmental baseline data at an appropriate level of detail. The assessment process should also identify:

- (i) applicable environmental and social laws and regulatory requirements of the jurisdictions in which the project operates, including those laws implementing host country obligations under international law;*
- (ii) applicable requirements under the PRs. Central to this approach is the application of the mitigation hierarchy and 'good international practice'.*

For projects that could have adverse environmental and social impacts, the client will, as an integral part of the assessment process, identify the project's stakeholders and design a plan for engaging with the stakeholders in a meaningful manner to take their views and concerns into consideration in planning, implementing and operating the project in accordance with PR 10" (paragraph 7).

PERFORMANCE REQUIREMENT 1

ASSESSMENT AND MANAGEMENT OF ENVIRONMENTAL AND SOCIAL IMPACTS AND ISSUES

It is important to note that the assessment process should identify and address potential significant issues associated with “activities or facilities which are not part of the project, but which may be directly or indirectly influenced by the project, exist solely because of the project or could present a risk to the project.” These may be either under the control of the project or belonging to third parties.

This means that the Bank can be held accountable for social and environmental impacts caused by third party activities or facilities, or activities or facilities held by the client that are not part of the financing but do somehow influence the project.

Category A projects require a comprehensive Environmental and Social Impact Assessment, which includes a) a scoping stage to identify potential impacts, b) examination of alternatives, including the no-project alternative, c) document the rationale for decisions, d) recommendations on how to avoid, minimize or mitigate (in that order) adverse impacts. It may need to be carried out by independent experts, but the requirements for independent expertise are PR specific (thematic specific).

For **Category B** projects, the client will undertake an environmental and social assessment that is proportionate to the scope of the project and will characterize potential future adverse impacts and measures to avoid or mitigate them.

For **Category A and B** projects with associated facilities, an appropriate social and environmental assessment process for those facilities will need to be carried out by an expert independent of those facilities.

For **Category C** projects, the client will implement an ESMP proportionate to the impacts. In order to streamline social and environmental management, clients are required to develop and follow Social and Environmental Management Systems for all projects. The client will also develop an overarching policy including objectives and principles to achieve sound social and environmental performance. ESMS will be implemented regardless if the project elements are carried out by the client or contractors, and the client will need to ensure that contractors meet the requirements of the PRs

PERFORMANCE REQUIREMENT 1

ASSESSMENT AND MANAGEMENT OF ENVIRONMENTAL AND SOCIAL IMPACTS AND ISSUES

Based on the outcomes of the social and environmental assessment process and the stakeholder engagement process, the client will develop a Social and Environmental Management Plans (ESMP) to a mitigate impacts and meet the PRs.

Depending on the project, these plans may consist of management systems, documented operational policies, procedures, plans, practices and capital investments . The Management Plans will favor **avoidance and prevention over mitigation** and compensation of impacts.

If the project involves **vulnerable groups** as identified during the assessment, the ESMP will include special measures to ensure that they benefit from the project and that impacts do not fall disproportionately on them. ESMPs will also cover 3rd party and supply chain issues.

The client will be required to monitor the project to address impacts identified through the assessment process, actions specified in the ESMP and Environmental and Social Action Plans, and any grievances, their resolutions from workers or stakeholders, and any other reporting requirements by other parties.

The client will regularly report to the EBRD on environmental and social performance including compliance with the PRs and implementation of the ESMS, ESMP, ESAP and Stakeholder Engagement Plan where appropriate, and corrective actions when needed. The client must immediately notify EBRD of any social or environmental incident or accident that may have significant impacts.

For projects with significant impacts, the client may be required to engage **independent experts** to perform regular reviews, as determined on a case by case basis.

PERFORMANCE REQUIREMENT 10

INFORMATION DISCLOSURE AND STAKEHOLDER ENGAGEMENT

EBRD recognizes that **transparent and accountable engagement** with affected stakeholders, which may include communities, workers, or other parties is good international practice and directly related to the social and environmental outcomes of the project. Nature and frequency of stakeholder engagement will depend on scale and impacts of the project.

Stakeholder engagement involves stakeholder identification and analysis, stakeholder engagement planning, the disclosure of information, consultation and participation, grievance mechanism, and ongoing reporting to relevant stakeholders. (para 6)

Impacted communities and other stakeholders must have access to timely, relevant, understandable, and accessible information, in a culturally appropriate manner, and free of manipulation, interference, coercion, and intimidation.

During project preparation, the client will identify groups or individuals who may be affected or who may have an interest in the project. The client will identify **groups or individuals who may be vulnerable or disproportionately affected** and whether they may require different or separate forms of engagement. The client will also identify how they will be affected and additional communication may be required to confirm and assure scale of anticipated impacts.

For projects with adverse social and environmental impacts, the client is required to develop a **Stakeholder Engagement Plan (SEP)** proportionate to the levels of impacts. The SEP will detail levels and types of engagements during project preparation and implementation with various stakeholders and the grievance mechanism. Barriers to participation such as gender, age, or other differences will be identified and addressed in the SEP, as will participation of vulnerable stakeholders. If stakeholder engagement is done through community representatives, the client will verify that the representatives are in fact communicating with the communities and representing their views.

PERFORMANCE REQUIREMENT 10

INFORMATION DISCLOSURE AND STAKEHOLDER ENGAGEMENT

The client must provide affected communities and interested parties with the following information, in local languages and culturally appropriate manner:

- The purpose, nature, scale, and duration of the project activities
- Risks to, and potential impacts on, stakeholders and proposed mitigation plans
- The envisaged stakeholder engagement process
- The time and venue of any envisaged public consultation meetings, and the process by which meetings are notified, summarised and reported
- The process by which any grievances will be managed.

A meaningful participatory consultation will be carried out on an ongoing basis and documented by the client. The client will continuously inform the affected communities of decisions, mitigation measures, and benefits from the project.

For Category A projects, disclosure and consultation requirements will be built into each stage of the ESIA process on a case-by-case basis. Informed participation involves organized and iterative consultation, leading to the client's incorporating into its decision-making process the views of the affected parties on matters that affect them directly, such as proposed mitigation measures, the equitable sharing of benefits and opportunities from projects, and implementation.

The scoping process with stakeholders shall start at an early stage of the ESIA process, and stakeholders must be able to provide comments and recommendations on a draft SEP and other scoping documents.

The Environmental and Social Action Plan should also be disclosed to the affected parties.

PUBLIC INFORMATION POLICY

In Accordance with its mandate, the purpose of the Public Information Policy (PIP) is to **strengthen transparency, accountability, and good governance in its activities**, including lending operations. It outlines the Bank's responsibilities in terms of disclosure of information and consultations with stakeholders. The current PIP applies to all projects approved after 7th of May, 2014. The PIP relates to four categories of information: institutional information; information on strategies and policies; project-related information; and accountability and governance related information. For the purposes of this toolkit, only information on strategies and policies and project related requirements will be addressed below.

COUNTRY STRATEGIES

These strategies provide guidance and parameters for EBRD activities in each country. The strategy must include environmental and social implications of proposed activities, and labor and gender related information about the country. Although Country Strategies are not binding, they do shape national investments, and are useful advocacy targets. A draft Country Strategy is publicly released and posted on the EBRD website for a 45 day public comment period. The Bank may engage with civil society and the public at the early stages of Draft development. The Draft will be translated into the official national language of the country. After the final Country Strategy is approved, the summary of public comments will be posted on the EBRD website.

SECTOR STRATEGIES AND POLICIES

The Bank has a set of sectoral strategies and policies to guide and provide parameters for investments in those sectors. Currently, these are:

- Transport Sector Strategy
- Property Sector Strategy
- Municipal and Environmental Infrastructure Sector Strategy
- Energy Sector Strategy
- Mining Operations Policy
- Information & Communication Technologies Sector Strategy
- Financial Sector Strategy
- Agribusiness Sector Strategy

Draft Sector Strategies and Policies will be publicly available for comment for a period of 45 days. After the Sector Strategy or Policy has been approved, the Report on the Invitation to Comment, containing the summary of public comments received and staff responses will be publicly released and posted on the Bank's website.

PROJECT SUMMARY DOCUMENT

For all private or public sector projects, a Project Summary Document (PSD) will be prepared and shall include the following information:

- the identity of the project company;
- total project cost (where applicable);
- the project location;
- a brief description of the project and its objective;
- guidance on how and where information about the project can be obtained, including contact points for the project sponsor and the EBRD Operation Leader;
- the rationale for categorization of a project;
- a description of the main environmental and social issues associated with the project;
- key measures agreed to mitigate the risks and impacts;
- where greater than 25,000t CO₂ equivalent/year, the expected GHG emissions of the project;
- a summary of any disclosure or consultation activities;
- a link to the ESIA page for Category A projects.

PUBLIC INFORMATION POLICY

For private sector projects the PSD will be released at least **30 days** before the Board date, and for public sector projects, at least **60 days** before the Board date. PSDs will be updated as needed and for Category A projects, environmental and social sections will be updated at least annually. The PSD will be translated into the national language as soon as possible following the release in English, and posted on the Bank's website. For public sector projects, Board reports can be available upon request.

For "Category A" projects, in addition to the disclosure required of the clients under the Environmental and Social Policy, the Bank is required to release the Environmental and Social Impact Assessments on its website at least 60 days prior to the Board date for private sector projects, and at least 120 days prior to the Board date for public sector projects. ESIAs are to be made available in the **local language**.

PROJECT COMPLIANCE MECHANISM

The Project Compliance Mechanism (PCM) is the Bank's grievance mechanism for project related complaints against the implementation of the Social and Environmental Policy, Performance Requirements, and the Public Information Policy. It is independent from Bank operations, and practices a degree of autonomy. The PCM is designed for individuals or local groups who may somehow be affected by EBRD financed projects, or other civil society organizations that have an interest in the project.

The PCM has two arms, the Problem Solving Initiative and the Compliance Review. The Problem Solving Initiative is for individuals or local communities directly affected by the project, and any person or organization may appeal to the Compliance Review.

A useful leaflet and detailed Rules of Procedure of the Project Complaint Mechanism can be found at the EBRD webpage:

<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism.html>

CEE Bankwatch also provides an in depth toolkit about the PCM:

<http://bankwatch.org/sites/default/files/guide-EBRD-PCM.pdf>

The EBRD's accountability mechanisms were established to address issues associated with the Bank investment projects. For these mechanisms to properly function, civil society organizations, communities, and individuals should take an active position in raising social and environmental problems associated with the EBRD projects. Accountability doesn't work unless we do.

We hope that this toolkit is helpful in outlining the basics of the EBRD accountability principles and explaining where to start your dialog with the Bank.

CONTACT US

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CRUDE ACCOUNTABILITY

Crude Accountability is an environmental and human rights nonprofit organization that works with communities in the Caspian and Black Sea regions, who battle threats to local natural resources and the negative impacts on their health. Crude Accountability works on the local, national, regional, and international levels in partnership with active communities and organizations committed to a just and environmentally sustainable world. Based in Alexandria, Virginia, Crude Accountability also collaborates with environmental organizations in the United States working on similar issues.