Public consultation

An evolution of public consultation requirements within the environmental impact assessment process at the European Bank for Reconstruction and Development

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Over its 12-year history, the European Bank for Reconstruction and Development (EBRD) has developed a range of public consultation requirements in response to its shareholders and the public. Public consultation takes place prior to, and following, the Bank’s consideration of a project as well as during project implementation. The Bank has also developed an accountability mechanism for grievances from people directly affected by projects financed by the Bank and has undertaken steps to improve reporting on the environmental impact of Bank activities. Case studies provide examples of EBRD’s initiatives on complex projects to improve disclosure of information and consultation.

Keywords: EBRD; international financial institutions; Central and Eastern Europe; former Soviet Union; public consultation; EIA; accountability

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The European Bank for Reconstruction and Development (EBRD) was established in 1991 to foster the transition towards market-oriented economies in the (now) 26 countries of Central and Eastern Europe and the former Soviet Union. As part of its mandate, the EBRD has enshrined in its founding agreement the commitment “to foster in all its activities, environmentally sound and sustainable development” (EBRD, 1990).

This commitment has been implemented through the Bank’s various environmental policies, which have undergone refinement in many areas, but particularly in public consultation. The EBRD incorporated public consultation requirements in its first environmental policy approved in 1991 (EBRD 1991) and procedures approved in 1992 (EBRD 1992), which included requirements for disclosure and public consultation on draft environmental impact assessments (EIAs), prior to finalisation. A commitment was also made to follow international standards, such as the UNECE Convention on EIA in a Transboundary Context (UNECE, 1991).

The Bank’s shareholders considered public consultation and transparency to be particularly important in Central and Eastern Europe and the former Soviet Union, because of the neglect of these issues under the previous regimes.

This paper summarises some of the key issues in the evolution of EBRD environmental policy with regard to EIA and associated public consultation. It highlights common problems that occurred in EIAs...
submitted to EBRD by project sponsors, and how the 2003 revision of the environmental policy attempted to incorporate measures to address these issues. Finally, the paper outlines a new accountability mechanism under development at the Bank to ensure that stakeholders who may be adversely affected by an EBRD project have the opportunity to raise their concerns with Bank external experts.

Following four years of implementation, the EBRD environmental policy and procedures were revised in 1996. The revised procedures included an annex containing significantly more detailed public consultation requirements (EBRD, 1996a; 1996b). In particular, it stated that EIA should be part of the required documentation for category A projects and should be disclosed by project sponsors at locations near the project site, and in a culturally appropriate way. More requirements were also imposed on the scoping stage of EIAs, because in a number of cases insufficient consultation had been conducted at early stages of the EIA process.

According to the 1996 environmental policy, the project sponsor was to use “best efforts” to translate the whole EIA into local language; however, these efforts did not always prove to be successful. In some instances, project sponsors wanted to translate only the executive summaries of their EIAs. These were often placed on the EBRD’s website (although this was not a requirement under the environmental policy) and the Bank encouraged the project sponsors to release the EIAs on their own websites. Some projects were located in areas where little or no interest in the project was shown (for instance, nobody attended advertised meetings or no comments were submitted during the comment period), and these project sponsors sometimes protested that there was little interest and limited local access to computers.

In 1996, the EBRD also developed a Public Access and Disclosure of Information Policy (EBRD, 1996c), which required project summary documents (PSDs) for each project to be put on the EBRD website prior to consideration by the EBRD Board of Directors. These PSDs contained environmental annexes elaborating on issues of concern, mitigation measures, and other environmental and safety aspects of projects. The EBRD also opened its Business Information Centre in London and resident offices in the region to the public for review of EIA documents, both during the active consultation period and on a more permanent basis.

EBRD experience with public consultation

During 1991–2003, the EBRD required disclosure of EIAs of some 45 category A projects (although some of these did not reach the Board of Directors because they were cancelled). Category A projects were commonly in oil/gas, mining, power and energy, and transport (port rehabilitation, roads, urban transport).

The general approach was that appropriate levels of public consultation had to be based on the needs of each specific project and its stakeholders. Achieving this often required discussion with the local authorities to allow a public meeting, or to find innovative means to disclose EIAs in places where there were no public libraries (for instance, local high schools), or where access was restricted.

In some countries, non-governmental organisations (NGOs) were reluctant to enter a public building where they must provide their identity and addresses to view an EIA. In these cases, EBRD worked with the project sponsor and NGOs to identify locations where EIAs can be freely viewed and commented on without fear of repercussions. EBRD has also provided technical assistance to develop capacity for public consultation, as illustrated in two case studies (Box 1) — the Kumtor project and the Sakhalinnornftegaz project — where EBRD assisted in improving communication between businesses and the public.

Over the years, the Bank has identified a number of common problems with EIAs and related public consultation requirements (Smith, 2000):

- Understanding local regional, and national requirements that apply to the project. These included those for EIA, worker safety and public consultation. Many project sponsors have not addressed these at the time they approach the Bank for financing, or they have not identified them comprehensively, which can delay the project.
- The overall quality of EIAs. Some EIAs failed to address relevant impacts or issues, such as the fate or amount of gas emissions associated with oil projects, the ‘Red Book’ rare or endangered species that might be impacted by projects, or impacts of water abstraction on groundwater levels. The current EBRD policy is that such omissions of key issues in EIAs should be remedied before they can be considered ready for public disclosure.
- Consideration of alternatives. One of the most common deficiencies in EIAs is the lack of serious consideration of alternatives. Many companies go through a consideration of alternatives at

A common deficiency in EIAs is lack of serious consideration of alternatives: the EIA should show the decision-making process and why certain options were more favourable than others, particularly when the best available technology or practice is not being proposed

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Box 1. EBRD’s assistance to develop indigenous capacities for public disclosure

Sakhalinmorneftegaz (Russia)

The EBRD financed a project in 2000 with the Russian oil company Sakhalinmorneftegaz (SMNG) for its on-shore operations on Sakhalin Island in the Russian Far East. SMNG had been operating on the Island for over 70 years, and was often blamed by the public and NGOs for many of the environmental problems there. Prior to EBRD’s involvement, SMNG appeared unwilling to meet with the public on environmental and safety issues and to share information in the public domain. This reluctance resulted in a number of complaints being received by the Bank during preparation of the US$90 million loan facility to SMNG, including reports and photographs from NGOs.

EBRD specifically examined the issues of transparency, information disclosure and communication with the public and NGOs. Specialist consultants made recommendations that were built into an environmental action plan and were included in the legal requirements of the loan. In addition to including requirements on public information and community programmes, EBRD supplemented the project with a technical assistance (TA) project, which was financed by Japan. This included technical environmental and safety management issues, and an advisor specifically to aid the company in areas of company–community interaction, environmental information disclosure both in routine and emergency situations, and dialogue with NGOs and the public.

SMNG agreed to keep local communities on Sakhalin Island informed about environmental and safety issues, addressing in particular the implementation of the project with EBRD and upgrading of various facilities. SMNG have established contact with NGOs on the Island and toured facilities together. The NGOs have assisted the company in communications with local residents near some of the facilities.

As a result of the ongoing work, the image of the company has notably improved, as demonstrated by the absence of complaints sent to the Bank. The local NGOs have even named the company as an example of the positive relations of an oil company with the public. The Bank monitors the implementation of the commitments and supplements reporting with site visits and independent audits.

Kumtor (the Kyrgyz Republic)

Another example of the efforts of the Bank to improve the interactions of its clients with the local population is the community business forum (CBF), developed alongside the Kumtor gold mining project in Kyrgyzstan. Following an accident in 1998 while transporting cyanide to the mine site, communications had deteriorated between the company and the local communities.

The EBRD and International Finance Corporation (IFC, private-sector arm of the World Bank Group) worked to create a forum by which stakeholders could meet and exchange information. The CBF was developed with the aim of increasing dialogue between business and community in the country, to bring about long-term social and environmental benefits. Funded by the UK’s Department for International Development (DFID), the CBF was mobilised by EBRD and IFC to promote an informed debate, to increase credibility and transparency of environmental performance and to engage and empower local communities in the Issyk-Kyl region.

A series of participatory workshop and meetings with local stakeholders enabled the real (rather than assumed) needs of key stakeholders to be clarified and acted upon. An associated small-grants program was developed and proved particularly successful in engaging local communities and NGOs, enabling them to bring tangible benefits to their communities, and to gain experience in grant and project management. The CBF provided further opportunities for local communities and NGO representatives to participate in global initiatives. This included opportunities to comment on the World Bank’s extractive industry review process and an invitation for the National Manager of the CBF to join the Assurance Group of the Mining, Minerals and Sustainable Development project.

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Revision of environmental policy in 2003

During the six years of EBRD’s implementation of the 1996 environmental policy, other international financial institutions (IFIs) such as the World Bank, International Finance Corporation, and the Asian Development Bank also made modifications in the way that consultation had been incorporated into policies and procedures (World Bank, 2004; ADB, 2004; IFC, 2004; Kennedy, 2000). During 2002, EBRD undertook a review of its environmental policy and proposed a number of improvements including increasing public disclosure requirements. These were incorporated into a revised draft environmental policy that was posted on the Bank’s website (www.ebrd.com) for public review and was the
subject of workshops, conducted with the assistance of NGOs, in London, Moscow, Szentendre (Hungary), and Baku (Azerbaijan).

Bank staff also conducted client surveys, Board of Directors workshops, and other mechanisms to obtain comments and suggestions for improvement prior to the policy’s submittal to the Board of Directors for consideration. In 2003, the Bank issued three documents: Environmental Policy, Environmental Procedures and Public Information Policy (EBRD 2003a; 2003b; 2003c). In particular, these documents made the following enhancements to public participation and disclosure requirements.

Reporting on environmental impact of EBRD

The EBRD had commitments within its previous environmental policy (EBRD, 1996) to report regularly on the impact of the Bank’s activities on the environment in its countries of operation. Summary information had been traditionally provided through the Bank’s publications Environments in Transition and the EBRD Annual Report.

The Bank noted that many of EBRD’s external stakeholders had expectations for organisations such as the EBRD to report more fully on issues such as greenhouse-gas emissions, environmental expenditure and the environmental ‘footprint’ of the Bank. EBRD therefore proposed in the revised environmental policy (EBRD, 2003a) to publish an annual environmental report that would have a more structured reporting format and contain significant information on the issues above and the environmental aspects of the projects approved during the reporting period.

Consultation issues

The communication of environmental issues associated with EBRD projects is a key component of both the Bank’s environmental policy and public information policy. The majority of changes in the 2003 environmental policy related to consultation and disclosure of information.

Language of EIAs The EBRD has always emphasised the importance of adequate disclosure of EIA documentation. The original environmental policy (EBRD, 1992) required that, at a minimum, a detailed executive summary of the EIA be available in the local language. In practice, the majority of EIAs have been prepared in the local language.

In 2000, the EBRD’s public information policy (EBRD, 2000) was revised to require Bank staff to use “best efforts” to obtain full EIA documentation in local languages and to make the project sponsor aware of the benefits of full translation. While the majority of EIAs were fully translated, the few exceptions caused concern among environmental groups, as local people could not fully access the detailed information. Therefore, the 2003 revision to the environmental policy included a requirement that all EIAs for category A projects must be translated into the local language.

Public consultation and disclosure plan In order to enhance effective public consultation on category A projects, EBRD now requires project sponsors to submit a public consultation and disclosure plan (PCDP) at an early stage of the project planning (for instance, scoping). This plan must identify potentially affected parties and document how the project sponsor intends to communicate with them, what types of information will be disclosed, and how comments will be taken into account. The document should be available to the public during the scoping process, so that it can be discussed early in the project development.

Feedback to stakeholders The requirement for the project sponsor to follow up on the consultation process by informing the stakeholders how their comments were taken into account and what the final decisions were is now included in the EBRD’s policy. This was done in response to the frequent omission of this important step in past consultation practices.

Public information on category B projects The 1996 environmental policy required, at a minimum, that project sponsors follow national standards for disclosure on category B projects.3 In some cases, EBRD required information on issues and mitigation measures committed in the environmental action plan to be disclosed to the local community. The 2003 policy strengthened this obligation by introducing a requirement that a summary of these issues and measures shall be disclosed locally (via newspapers or other culturally appropriate means) prior to consideration of the project by the EBRD Board of Directors.

Public information after the Board decision A concern EBRD has heard over the years is that its disclosure requirements did not extend to the construction and implementation stages of project development, and that the public only had summaries of information prior to the project being considered by the Board of Directors. The public wanted reassurance that the commitments made in EIA documents had been met. EBRD now requires that project sponsors of category A projects report annually to the public on their project’s environmental, health and safety, and consultation status, and that other categories of project (B, C,4 and financial intermediary (FI) projects) update the PSDs on the EBRD’s website with a brief summary of the environmental issues for the reporting year.

Accountability mechanism EBRD is developing a mechanism, known as the independent recourse mechanism (IRM), that will allow local communities to file grievances directly with the Bank. The proposal
for the IRM was developed following an examination of similar mechanisms in other IFIs and consultations within the Bank, with shareholders and NGO representatives. The mechanism has a dual function of problem-solving and compliance review. Under the former, the IRM would review local communities’ concerns about the possible adverse effects of EBRD-financed projects, while compliance would improve the accountability of the EBRD in following its own environmental policies and procedures.

Conclusions

From the early 1990s, EBRD introduced and maintained public participation requirements in its environmental policy and procedures. It has been challenging to ensure transparent and consultative decision-making on environmentally significant developments in societies that had had little, if any, democratic tradition or institutions. Through listening to its stakeholders and accumulating and evaluating its practical experience, EBRD has gradually adjusted and developed its requirements to correspond to the complex and changing reality of the region.

The overall trend in this development was towards more locally appropriate (for instance, through language requirements), more systematic (for instance, through developing PCDPs), more interactive (for instance, through obligatory feedback) and more continuous (for instance, through requirements for post-Board disclosure) public consultation provisions. In addition, the Bank has committed to more systematic reporting on environmental impacts of its activities, and is developing an independent recourse mechanism that will increase the accountability of its decisions.

It is yet to be seen how these new provisions will work in practice. The Bank will monitor the implementation of all the requirements and review the environmental policy in three years. For more information on the EBRD’s policies and projects, visit www.ebrd.com.

Notes

1. Project sponsors are those private or public parties that propose projects to the EBRD to be considered for financing. They are also known as ‘sponsors’ or ‘project developers’.
2. Projects are classified as category A when the defined use of proceeds of the EBRD funding would involve greenfield developments, or major expansion or transformation-conversion that could result in potentially significant adverse future environmental impacts that, at the time of screening, cannot readily be identified or assessed (EBRD, 1996b; 2003b).
3. Projects are classified as category B when the defined use of proceeds of EBRD funding would involve new construction, rehabilitation, or process/technology changes that could result in future environmental impacts that are less adverse than those of category A projects, taking into account their nature, size and location, and the characteristics of the potential environmental impacts. These projects require an environmental analysis (EBRD, 1996a; 2003a).
4. Projects are classified as category C when they do not need an environmental impact assessment or analysis. Category C projects are still subject to audit requirements and may require public consultation. Financial intermediary (FI) projects are loans to, or equity shares in, local banks in the EBRD’s region of operations. These funds are then lent on to small and medium-sized enterprises.

References