

**United States (U.S.) Comments on the
European Bank for Reconstruction and Development (EBRD) Environmental and Social
Policy (ESP) Revision Draft for Consultation
March 7, 2014**

The U.S. welcomes the proposed improvements to the EBRD's current Environmental and Social Policy (ESP), such as the new references to human rights, gender, resource efficiency, water, and Financial Intermediary Category A sub-projects. The U.S. also has a number of suggestions for further improvements.

With respect to the overall safeguards system reflected in the ESP, largely articulated in the "EBRD ESP" and Performance Requirement 1, the U.S. has the following comments and suggestions:

- **Deferred appraisal.** The U.S. believes that the text on deferred appraisal should: 1) clarify the specific circumstances in which deferred appraisal would be appropriate; 2) require that the Board be informed of the anticipated timeframes for the deferred appraisal; and 3) state that the Board has the option to request that future subprojects or specific uses of funds return to the Board for decision when environmental and/or social risks are particularly high.
- **Alternative approaches to the Performance Requirements.** The U.S. recommends that the EBRD, like other Multilateral Development Banks (MDBs), require the use of the Performance Requirements and not allow for alternative approaches.
- **Client responsibility for implementing the Performance Requirements.** The U.S. recommends, consistent with the approaches at the World Bank, International Finance Corporation (IFC) and other MDBs, that clients also be required to comply with the Performance Requirements in activities that are not financed directly by the EBRD (so are not part of the "project"), but are associated with the project.
- **Category A and B definitions.** The U.S. recommends that the Category A definition be consistent with that of other MDBs in that it reflect the significance of the potential impact, not the degree to which impacts can be mitigated or the ease of identifying impacts, and that the definition for the Category B projects be revised to match the IFC's definition. The U.S. also recommends that Performance Requirement 1 be clear that the client should follow the EBRD's category decision.
- **Mitigation hierarchy.** The U.S. recommends that the footnote defining the mitigation hierarchy should reflect more clearly the commonly accepted hierarchy of "first avoid," then if avoidance is not possible, "minimize and mitigate," and then "offset/compensate" for residual impacts, as a last resort.
- **Documentation to the Board – Environmental and Social Action Plans (ESAPs).** The U.S. recommends that the documentation provided to the Board include the anticipated

timeframe or schedule for a project to be in compliance with the Performance Requirements.

- **Specification of technical standards.** The U.S. recommends that the text state, in an appropriate place, that the Environmental and Social Impact Assessment (ESIA) will identify the applicable requirements for the project, including technical standards. There may be cross-references of particular issues in the Environmental and Social Management Plan (ESMP) and ESAP.
- **EBRD assessment of Financial Intermediaries.** The U.S. recommends that the EBRD, like other MDBs, be responsible not only for assessing Financial Intermediaries' environmental and social management systems but also for identifying gaps and overseeing implementation of necessary gap-filling measures.

With respect to specific substantive areas, the U.S. has the following comments and suggestions:

- The U.S. recommends a more robust approach to **climate change**. This should include considering climate in each alternative; requiring measures to reduce greenhouse gas (GHG) emissions; preventing maladaptive investments; and, for projects with high potential GHGs, considering an expanded assessment of policy and economic considerations.
- The U.S. recommends that the ESP and Performance Requirements address issues related to **land tenure and land use**.
- The U.S. recommends that the EBRD apply a consistent definition of **vulnerable individuals and groups** that includes sexual orientation, gender identity, religion, and indigenous status.
- The U.S. recommends using language that is supportive of appropriate **benefits and opportunities for affected communities** while maintaining flexibility in how those benefits are derived.
- **Performance Requirement 2 (labor)** should more clearly recognize the client's responsibility to identify and assess the risk of child and forced labor in its primary supply chain.
- **Performance Requirement 3 (resource efficiency and pollution)** should be explicit that the client's identification of Good International Practice (GIP) standards will be agreed by the EBRD (not solely the client's choice).
- **Performance Requirement 4 (health and safety)** should focus solely on client responsibilities, and should require that risks be managed to an acceptable level.

- **Performance Requirement 5 (involuntary resettlement and related issues)** should, in all cases, seek to improve living standards and require that clients avoid pre-resettlement activities that negatively impact affected communities.
- **Performance Requirement 6 (biodiversity and living natural resources)** should not allow offsets for impacts in critical habitat. If they are allowed, Performance Requirement 6 should require baseline data to assist in the identification of critical habitat and require sufficient capacity and commitment by implementing entities. It should adopt a more flexible approach on genetically modified organisms, as proposed restrictions lack a scientific basis. It should adopt a more risk-based approach to intentional introductions of invasive alien species.
- **Performance Requirement 7 (indigenous peoples)** should recognize the collective ownership rights of Indigenous Peoples, in those cases where they possess the land and natural resources in question, and also recognize access and usage rights on a collective basis. It should also acknowledge that there is no internationally agreed definition of “free, prior and informed consent” and note that the proposed definition is for purposes of the Performance Requirements.
- **Performance Requirement 9 (financial intermediaries)** should require at least a minimum of information disclosure by Financial Intermediary subprojects that are “medium” or “high” risk in the Financial Intermediary sub-project lexicon, comparable to that required of directly financed Category B projects. It should also require that Category B subprojects comply with the relevant Performance Requirements, consistent with the IFC’s approach.
- **Performance Requirement 10 (disclosure and stakeholder engagement)** should include both Environmental and Social Management Plans and, where they exist, Environmental and Social Action plans, in the disclosure and consultation process on projects requiring an ESIA.

As with any policy, implementation is the key to an effective outcome, so the U.S. encourages the EBRD to be open to constructive ideas on improving supervision during implementation and incorporating safeguards into ex-post evaluations.

The U.S. would particularly like to emphasize the importance of robust implementation of the provisions to provide information on Category B projects to the Board and for clients to provide information to communities that are likely to be affected by these Category B projects.

As the EBRD moves forward in implementing its new policy, the U.S. encourages the EBRD to increase its engagement with civil society organizations in those areas where such organizations have expertise. For example, the U.S. believes that some civil society organizations have experience that might be useful in the areas of gender, sexual orientation, gender identity and disability.