1. Introduction

The Company being evaluated is part of the largest industry in the country and carries a significant part of the country’s economy in various ways. It has been an environmental “Pandora’s box” and has always been a subject of concern for both the government and the population. The Bank provided a pre-privatisation loan for international consultancy services to assist the government in a privatisation tender for the Company. At the same time, the Bank had an environmental loan in mind, which was to be extended to the Company’s new owner upon acquisition. The Bank then processed two technical cooperation (TC) operations to incorporate transparency into the privatisation process and environmental sustainability into the Company’s future operations. The Bank’s involvement was welcomed by the population and by the government.

The consultants for the pre-privatisation loan assisted the government in formulating and negotiating the sale of the Company in a fair manner. The consultants also submitted the results of the environmental due diligence, which screened a large number of problems, issues and recommendations. The latter provided a focused scope for the TCs. While the TCs were being prepared, the acquisition of the Company was undertaken quickly, faster than expected. The proceeds from the sale of the Company enabled the Bank’s loan to be fully repaid but the consultants under the TCs commenced their services.

The new owner of the Company, the large industry group, was considered unsuitable for the Bank’s operations according to the operational policy at that time. The Bank’s involvement moved away from the Company. The Bank’s sudden withdrawal from further deals weakened the TC objectives. The TC findings were not incorporated into the new owner’s sale conditions. The TC counterpart, the Ministry of Environment, was not the negotiating party in the privatisation process, therefore TC accountability was weak. Both the privatisation agency and the Ministry of Environment were criticised by NGOs for restricting access to related information about the Company. The Bank was caught in this sensitive situation both before and during privatisation. After the Bank pulled out, the gap widened between the public and the Bank, resulting in reputational and NGO risks.

As a result, the original aims of the Bank to make the privatisation socially acceptable, viable in financial and economic terms and environmentally sustainable were only partly fulfilled, and the outcome of the TCs simply became a study. The new owner is still seeking a financing source for the environmental improvements and the Company’s environmental sustainability remains uncertain.

2. The project

2.1 Background

The Company is the largest metallurgical producer and the largest corporate in the country. It was established in the 1960s and was wholly owned by the former government. The Company is located in the vicinity of the country’s capital city and a Ramsar Wetlands Convention-designated lake.

---

1 Modern investment theory and practices would have suggested closing the Company down due to it being neither financially viable nor environmentally sustainable. However, it was never an option for the government given the large number of direct and indirect employment and the influence on the peripheral industries. The government did not wish to put a significant part of people’s livelihoods at risk.
(“the Lake”). The location of the Company was chosen because of (i) proximity to good quality raw material reserves; (ii) hydropower stations; and (iii) logistical advantages with a port.

In the 1980s and until 1991, the plant operated satisfactorily, at or above design capacity. Production was severely reduced during a series of regional conflicts and fell to its lowest levels in 1994. Borrowing increased exponentially at significantly high interest rates from foreign lenders during a hyper-inflationary period and affected the operational capacity.

The reports on the conditions of the plants at that time confirmed that they required immediate investment for rehabilitation and modernisation to keep the plants operational. The cost was estimated at US$ 200 million. Lack of supply of raw materials and the absence of financing for repair and maintenance aggravated the state of the plant. A serious maintenance backlog caused cannibalising of parts and materials in the production facilities. Some parts of the plant significantly deteriorated and minimised the supply.

Among the large number of serious problems with the Company, the following issues had grown uncontrollably and reached a critical point in the early 2000s:

- high indebtedness from creditors, mainly suppliers. Dissolving the mounted debt, thereby obtaining the creditors’ consent to transfer of ownership, was considered one of the major impediments to the privatisation
- large surplus workforce of the largest employer of the country
- unviable interdependence for extraordinarily subsidised utility prices with a state-owned utility enterprise and its non-transparent connections.

2.2 Privatisation initiative and the Bank’s involvement

The Company has been considered one of the country’s most important enterprises having generated a large part of gross domestic product, of employment and of exports. Privatisation was a priority for the government and also raised the keen public interest of citizens. Before privatisation, the Company was 65 per cent owned by the government and the remainder by employees.

The tender commission for the Company was first formed in the late 1990s and the difficulties of privatisation intensified as a result of the political situations and the relationship with employee unions. The public demanded transparency. Following the decision issued by the Privatisation Council, the government and the Company requested that the European Bank for Reconstruction and Development assist them in the privatisation process. The Bank intended to finance consulting services for the preparation of an international tender of the Company.

The selection and recruitment of privatisation advisers began in the early 2000s. The privatisation agency raised an expression of interest in providing advisory services in the privatisation of the Company. Simultaneously, the Bank approved a sovereign-guaranteed €3 million loan to procure consulting services for the Company. The loan to the government (the privatisation agency) comprised two advisory services: (i) privatisation advisers; and (ii) support to the project implementation unit.

The privatisation advisers provided support and guidance on various critical issues such as debt restructuring, investment planning, privatisation strategy and tendering rules, legal and financial analysis, and most importantly, the contents of the share purchase agreement (SPA). Based on their

2 The Company currently employs approximately 3,000 to 4,300 people officially, as against 1,000, which is the estimated workforce required for the current production.
recommendations, the government placed the Company on an international tender for a strategic investor.

Of the nine expressions of interest, four companies were shortlisted. On the closing date for bidding, only one company submitted a bid. After the examination of the bid, the negotiations commenced with the sole bidder. In six months, key elements for the SPA were agreed upon and the government and the new owner signed a protocol followed by the signing of the SPA. The Bank disbursed €1.9 million in total. The government prepaid the loan in full from the proceeds of the sale of the Company’s shares as envisaged in the loan agreement.

The SPA comprised four major elements all of which the new owner has been obliged to observe: (i) share purchases; (ii) the investment plan; (iii) the environmental investment according to the environmental action plan; and (iv) the social programme. The large investment plan was laid down for upgrading the production facilities. The Resident Office (RO) reported that the Company already made certain investments for production facilities upgrades, which appear to be in line with the investment plan. The implementation of the environmental action plan was set forth by the environmental due diligence consultants. The SPA only allows the new owner to make surplus workforce redundant from the second year onwards. The Company is also obliged to introduce an incentive-based salary scheme.

The new owner provided the government with a performance bond and corporate guarantee to secure its commitment to the SPA. The government monitors compliance with all the conditions semi-annually in coordination with other agencies such as the Ministry of Environment.

On the other hand, the government accepted the past environmental liabilities up to the time of the SPA. The SPA appears to have been prepared to the international standards, in many ways owing to the Bank’s assistance. Such liabilities included existing hazardous waste removal from the Company’s solid waste disposal site, current air emissions, groundwater contamination outside the Company and compensation for the consequences from the Company’s past operations. These milestones were included in the environmental action plan. It was reported that the Company had arranged to send hazardous waste abroad. The government is due to pay the costs for this. For solid waste, the municipality plans to build a new landfill, where the Company will dispose of its solid waste by paying fees to the municipality.

2.3 Environmental conditions
The OPER team does not intend to overburden the reader by listing the Company’s major environmental problems. Only limited environmental descriptions are given in this report. Serious environmental impact identified in a series of surveys encompassed the areas of air emissions, ground water contamination by polychlorinated biphenyls (PCBs), various chlorinated hydrocarbons, direct wastewater discharge into the river, and hazardous waste and solid waste disposal. High energy inefficiency has repeatedly been noted. Poor health and safety practices and the absence of adequate environmental monitoring and management have also been identified.

In the past, several environmental surveys were conducted at the Company sites apart from the regular environmental monitoring by the Ministry of Environment. However, most of them were one-off purpose-specific surveys, which were unsystematic. The environmental data and information have never been disclosed to the public in the Company’s history.

---

3 In addition, the new owner committed to the environmental action plan, which was considered a remarkable achievement for the government. However, the comprehensive environmental action plan was not negotiable because it would reduce the attractiveness of the Company, thus the government’s bargaining power.

4 Air emissions from the Company have not been monitored by the government as it was not included in the monitoring programme.
In the late 1990s, a leak of pyrene-contained drums occurred on the Company’s site and contaminated the neighbourhood. The research centre examined about one hundred wells and found a serious PCB contamination in the food chain. Despite measures that were proposed by the research centre, no sanction or compensation was imposed and the research centre abandoned the investigation.

The Company has constantly been in breach of the national environmental regulations and thus charged a penalty. The penalty has not actually been paid to the government. There were times when the Company regularly paid polluter fees to the lake’s national park. However, since the decline in production after 1992, such payments have no longer been made.

When the Bank was involved in the Company’s privatisation process, the intention was to provide the Company’s new owner with an ensuing loan for environmental improvements toward EU standards. This was meant to make part of the investment plan, which the new owner would propose on the privatisation tender and would therefore undertake vis-à-vis the government. In other words, the Bank, the privatisation agency and the Ministry of Environment expected the Company’s new owner to execute the winning investment plan for upgrading the production facilities and the Bank to extend the environmental loan to the new owner for strengthening sustainability.

Anticipating possible financing of the environmental project, the Bank initiated the following environmental studies. The purpose of these studies was to assess the Company’s environmental status and to formulate the necessary environmental components taking part of the new owner’s investment plan. The Bank also meant to determine the amount of the ensuing loan based on the results of the environmental due diligence.

- Environmental audit and environmental and energy review financed from a TC by the government of the Netherlands
- Environmental due diligence conducted as part of the privatisation advisory services financed under the loan.

Environmental due diligence identified a number of actual or potential non-compliances at the Company in relation to the environmental air quality, environmental noise, water, solid waste, red mud and hazardous materials. The findings also revealed that the Company’s energy consumption per unit output significantly exceeded industry best practice. Suggestions and recommendations were incorporated in the environmental action plan that was to constitute part of the investment plan. The estimated amount of the ensuing environmental loan appeared to be €20 million. The study also indicated two important areas to be focused on when implementing the environmental action plan: (i) the capacity of the environmental supervisory authority for the Company, namely the Ministry of Environment, needed to improve in terms of EU standards, more appropriate legislation and enforcement; and (ii) safety standards of the Company, including health conditions of workers, which was an unexplored area and needed to set a baseline for future improvement before acquisition. These studies, particularly TC 2, were strongly recommended by the consultants hired for environmental due diligence.

- Capacity Building in Environmental Authorities ("TC 1") financed from the Italian TC Fund
- Health & Safety Base Line Audit ("TC 2") financed from the Italian TC Fund.

---

5 The identified necessary environmental components were in fact much higher than €20 million. However, the new owner negotiated strongly to pull it down to €20 million.
It is believed that the country lacked the capacity to monitor and effectively act on environmental data related to the Company’s site and the nearby protected lake. Therefore it was suggested that the environmental capacities in the relevant ministry concerned with environmental management in the country should be strengthened. The aim of the assignment under TC 1 was therefore to identify the existing and potential environmental problems with regard to the Company, to hear the environmental concerns held by the local people and NGOs, particularly with respect to the protected lake, to assess monitoring capacity of the concerned authorities, to suggest an appropriate training programme and to prepare monitoring manuals. In view of the ensuing investment, the study was expected to help the Bank and the project stakeholders formulate the sustainable project.

The implementation of these TCs are described in later sections of this report.

The winning bidder on the privatisation tender was an industry group considered unsuitable as a business partner for the Bank’s business. Because of potential integrity concerns of the politically exposed person at that time, the Bank decided to refrain from further involvement in the Company. The Bank suddenly toned down its ensuing environmental loan to the new owner.

The operational policy, on integrity grounds, did not let the Bank continue. However, the possibility for the Bank to revisit its environmental endeavour for the Company and reactivate investment planning is not ruled out. Should this be the case, the Bank would be giving itself a possible second chance to turn the Company around for environmental sustainability and to prevent the industry giant from the exploitation of natural and human resources in the country. Should it be the case in Bank operations, the capacity of the Bank to incorporate genuine sustainability into the possible investment would be tested. The Bank would have many issues to consider when formulating the new investment for the Company.

2.4 Evaluation scope
This report primarily covers TC 1 and TC 2. As far as relevance, the loan components are included for assessment. However, the evaluation as such would not pre-empt the evaluation and ratings of the loan itself.

3. Project rationale
The rationale of the TCs was compelling for all the project stakeholders including the Bank, the ministries and the Company.

These two TCs were expected to incorporate transparency and sustainability into the privatisation process. There was a strong demand from the public for transparency in the privatisation process, which was sometimes considered a “black box”. The privatisation agency also lacked the technical and financial capacity to launch an international tender from its own resources. The Bank’s assistance consisting of grant-financed environmental inputs and a loan for hiring consultants was strongly sought by the government to convince the public of transparency and sustainability.

During the due diligence for the loan (the aforementioned environmental due diligence), the Bank identified a series of significant environmental and health and safety issues concerning the Company, as mentioned earlier. The production facilities were not in compliance with national and international standards. Liabilities from past operations were likely. The awareness of the environmental issues was low in the Company. In particular, health and safety conditions had never been a central subject of concern in the Company’s history. The baseline audit under TC 2 was fully justified.
Because of the Company’s location in an environmentally sensitive area, the public interest in pollution has risen increasingly. The domestic environmental regulations were still lagging behind EU directives. The primary rationale of TC 1 was to clarify the environmental liabilities both for the past and the future and to prepare a comprehensive monitoring programme for the Company in accordance with the international standard. This was also expected to be incorporated into the privatisation package.

The Bank planned to make use of the findings and recommendations into the privatisation package, thereby enabling it to pursue the Company’s environmental improvements in an ensuing investment. Under TCs 1 and 2, the consultants were originally expected to identify the investment components for the ensuing actions for health and safety in the environmental action plan. However, this attempt was bound to face a re-think when the new owner appeared as the industry group that the Bank was inclined to avoid.

4. **Achievement of objectives**

From project inception to completion, the original objectives of the TCs themselves were modified according to the rapidly changing situation relating to the privatisation process. The consultants’ tasks were accordingly adjusted to the new situations. The OPER team has assessed the achievement of the TC objectives as *Satisfactory*. The rating is explained by the fact that (i) the original objectives were not achieved but alternative appropriate achievements were nevertheless made; (ii) major tasks were implemented but with delay; and (iii) the output was not of full use for the sustainable privatisation. The TC Operation Leader rated the TC assignments *Partly Successful* and the consultants’ performance as *Good*.

4.1 **TC 1: Institutional building in environmental authorities in connection with the privatisation of the Company**

TC 1 was not formulated at the time of the loan approval. As mentioned earlier, the need for capacity building was raised in the process of environmental due diligence performed under the loan. The Bank’s TC Committee approved the TC, of which the objectives were stated as follows:

- evaluate existing structures and environmental monitoring measures
- identify training and equipment upgrade needs
- assess protected area management capacity in the ministry
- develop improved systems and structures
- develop training programmes for ministry staff.

The selection and recruitment of consultants was conducted but was delayed significantly. It took more than a year for a grant agreement and the consulting services agreement to be signed. The consultants commenced their works 10 months behind the schedule set at the procurement notice. The reason for the delay was mainly due to difficulties in identifying the counterpart in the TC executing agency and firming up the implementation arrangements and tasks.

Since the TC Committee meeting, the objectives and tasks of the assignments became more refined and specific when the consulting services agreement was negotiated. In particular, emphasis was made on the protected lake, for which little data on its biodiversity was available due to the absence of a biodiversity monitoring scheme. The objectives were reinstated as was the assisting Ministry of Environment to: (i) monitor and effectively act on environmental data; (ii) make sound decisions concerning biodiversity conservation activities; and (iii) support institutional capacity-building aimed at conservation of rare and endangered species at the lake which has been impacted by wastewater from the site.
In reality, when the consultants mobilised in the country, the Company had already been acquired by the new owner and the environmental monitoring programme for the Company had already been prepared by the relevant environmental authorities themselves. Moreover, the Bank had already decided not to provide the ensuing environmental loan. Therefore, tasks for assisting the Ministry and monitoring agencies (that is, in establishing new monitoring norms for the Company commensurate with the EU directives and identifying components for the ensuing loan) became less worthwhile to pursue.

Notwithstanding, major tasks such as assessing the capacity of the environmental authorities and reviewing legislation and monitoring practices were performed. Monitoring guidelines and manuals were also prepared. In addition, more emphasis was made on monitoring and protection of the lake and reviewing the country’s public disclosure policy for the environmental data. A roundtable for the project stakeholders such as the Ministry, the Company, monitoring institutes and NGOs was organised twice. The roundtables had not been included in the original scope of work.

Another delay occurred as a result of the assembly election, as many ministry members changed after the new government was elected. The counterpart staff at the executing agency, the Ministry of Environment, were replaced. Reorganisation of ministries followed a government reshuffling. The executing agency then changed its name from the Ministry of Environment to Ministry of Tourism and Environment. This also posed certain difficulties in the study being undertaken with respect to the legal framework and authorities of the ministries. Even scheduling a wrap-up meeting was difficult. The comments on the draft final report were never provided by the counterpart executing agency. The payment to the consultants was also delayed by three to six months due to an administrative muddle at the executing agency.

The study identified a number of issues and problems in the state environmental monitoring practices. The state environmental monitoring programme does not describe the criteria for the selection of the indicators nor an integrated analysis of pollution in different environmental media. Overall, it has been lagging largely behind the international and EU protocols and conventions, although some legislation to keep abreast with the EU directives was planned. Weak enforcement is also another serious problem in the country. The findings and recommendations were valued by the executing agency, although such recommendations were not actually taken into account or put into practice.

After 6.4 person months of services, completion of work took place nine months behind the original schedule. The OPER team considers that the objectives of the TC 1 have partly been achieved.

### 4.2 TC 2: Health and safety baseline study for the Company

TC 2 objectives were formulated based on the fact that health and safety issues associated with the Company had not been fully ascertained. No detailed information was available on occupational disease within the workforce. Therefore, a health and safety baseline audit was required to identify issues associated with the existing facilities and to determine existing liabilities associated with the workforce taken over at the time of privatisation. Priorities of mitigation measures and investments, should form a component of future investments, including upgrade of existing medical facilities to deal with occupational disease and the need for additional personal protective equipment (PPE) at the Company. The assignment was considered challenging as it requires full cooperation from the Company’s management and the employees’ union, this being crucial as an input to the privatisation process.

Due to the complexity of the assignment, the consultants went to the Company to discuss the scope of work and detailed implementation arrangements with the Company, which would be included in
the consulting services agreement with the Bank. The consultants fielded to the sites with a five-month delay. An epidemiological survey was conducted five months behind the schedule. The presentation to the Company’s management and union representatives, the research centre and others was conducted.

Two notable achievements were made in the design and formulation of the tasks: (i) the very first epidemiological study in the Company’s history on 650 workers. The study included clinical examinations, urine sampling and X-ray of lumbar spine and pelvis; and (ii) assessing compliance with all relevant national and EU health and safety requirements. At that time, the country did not acknowledge the EU directives on health and safety. For the new owner of the Company, it would be crucial to know how far the Company was from the future health and safety obligations to be imposed by the European Union.

The study thoroughly examined the facilities. It reviewed the records of past injuries and fatal accidents, incidence of occupational diseases and the status of compliance with the EU health and safety standards, then identified the risks for potential hazards. It also emphasised the need for PPE and structural upgrades and for best practices with priorities for preventive and corrective actions. Findings indicated the following risks: occupational diseases, obsolete technology and equipment, poor maintenance and housekeeping, inadequate PPE and health hazards.

Surprisingly, the epidemiological survey indicated that no serious symptoms were detected and that only 4.81 per cent of workers with possible or initial stages of diseases had been employed for over 19 years. Nevertheless, the OPER team has raised concerns. The examinations should be periodic and continuous to be scientifically meaningful as one-off sampling results suggest little of the entire picture.

The presentation of the findings, conclusions and recommendations took place. Although no Bank staff were present, five key health and safety staff participated from the Company. They included a member of the board of directors, a human resources manager and a union representative. The Deputy Minister of Environment also attended, together with officials from the Ministry of Social Care and the privatisation agency and the director of the research centre.

Reportedly, the Company demonstrated keen interest in the issues raised by the six consultants involved in the baseline study. The new owner’s seriousness about the health and safety issues could well be explained given the critical timing of the acquisition. It was at the very last moment for the new owner to decide whether or not to conclude its acquisition of the Company. The SPA allowed the new owner to examine the Company sites by a certain time frame, after which a further few months of the contemplation and decision-making period was provided. The new owner at that time was still uncertain about the degree of liabilities for employee health status. The neutral outcome of the epidemiological study somehow provided a comfort or a tentative relief to the new owner and the Company’s management, thereby moving them towards a firm purchase of the Company. In this sense, the results of the TC 2 were delivered in a timely manner despite the delay.

Notwithstanding, the original objectives of the TC were not fulfilled due to the timing difference. The environmental action plan undertaken by the Company did not reflect the feedback from this study. The OPER team considers that this objective to be partly achieved.

5. Overall assessment
The TC operation conducted as part of the Company’s privatisation process is assessed as Partly successful. The TCs were formulated as a result of the environmental due diligence carried out by the privatisation consultants hired from the loan proceeds. The TCs envisaged developing an
adequate monitoring programme for the Company and conducting an environmental baseline study at the plant. The Bank aimed to incorporate the outcome of the TCs into the comprehensive environmental action plan which was due to be undertaken by the new owner. At the time of the TC’s inception, the Bank was considering an ensuing environmental loan for €20 million for the implementation of the environmental action plan. The Bank’s additionality is verified in all respects. However, the Bank’s then integrity policy for operations did not allow it to go further with the new owner. This change in planning diminished the rationale of the TCs. Despite the changes of circumstances and the delay in the TC implementation, the consultants completed their tasks in a satisfactory manner. The objectives of the TCs being partly achieved, the fulfilment of the objectives is thus considered to be Satisfactory. The TCs had significant potential for transition to the Company --- the monopoly in the largest industry --- by introducing new standards and a framework for markets, thereby creating demonstration effects. However, the outcome did not solicit further actions by any party and remained simply as a study. Therefore, only limited impact was verified and considered Marginal, while transition potential is still pending the new owner’s further action and/or the Bank’s intervention in the future, thus exposed to High risks. The TCs were designed as the environmental assistance, which has brought only some changes to date because of the limitation of use of the study results. The environmental performance of the executing agencies for the TCs is considered Satisfactory during the TC implementation.

6. Transition impact and additionality

6.1 Overall transition impact
Transition impact of the TCs is assessed as Marginal, with High risks for transition potential. The impact at institutional level is subtle and indirect. The TC did not generate direct and discernable impact on the executing agencies (Ministry of Environment and the Company) for various reasons. For the former, (i) the original objective had to be modified and the purposes became more diversified and diluted; and (ii) the counterpart staff changed during the implementation, which shifted the need. Also, the target entity was in the process of restructuring. The Environmental Agency was established and EU standards were integrated into the environmental policy. These changes preoccupied and distracted them from the TC implementation. For the Company, there are some technical difficulties for the proper assessment and impact verification: the results of TC 2 did not constitute the environmental action plan nor the ensuing loan’s covenants. There were no health and safety requirements set out in the environmental action plan. The Company is not obliged to fulfil the recommendations made by the consultants unless the new regulations enforced them. Lastly, the Bank ceased its business with the Company except for the TC implementation. There is no formal channel to discuss the outcome of the TCs or the current status with the Company. The OPER team tried to establish communication with the Company; however, it was very difficult, resulting in no success. The transition impact of TC 2 on the Company is not relevant for the assessment at this stage.

6.2 Company impact
The transition impact at the corporate level is assessed by the following: (i) if conducting the study and/or the contents of the study had any significant intra-organisation demonstration effect at each beneficiary, that is, the Ministry and the Company; and (ii) the study has brought any new standard or business conduct to each counterpart.

TC 1. The corporate level impact on the Ministry of Environment should have formed the major benefit of TC 1 as the latter aimed at capacity building, among other things, raising the monitoring standard of the supervisory agency for the Company. In reality, the desired impact did not emerge for several reasons. The study formulated by the previous government turned out to be less valuable in the current government’s agenda. Therefore, its demonstration effect within the Ministry of
Environment has also been reduced. Nevertheless, the deliverables have been of some use, mostly in unintended ways.

The consultants’ report comprised the identification of the issues on the regulations and some suggestions regarding the institutional set-up and legislative framework. These were considered helpful, but generally less practical for the Ministry of Environment because the Ministry is not a principal decision-maker for restructuring or reorganising the government agencies. Notwithstanding the consultants’ observations and recommendations regarding the environmental monitoring programme at the Company, the site was used as a basis for roundtable discussions.

In addition, the Ministry of Environment uses the report as a reference document for the ongoing preparation of the Environmental Agency. It is considered useful for reformulating the environmental obligations. Another beneficial part of the report was the EU environmental standards and the milestones to comply with, which helps the Ministry of Environment’s ongoing activities largely financed by the European Commission. The monitoring manuals and operational guidelines were considered good documents but redundant as the Ministry of Environment has its own.

**TC 2.** The original aim was to set the data which would serve as a baseline for future comparison; this would have had either to be covenanted in the Bank’s ensuing environmental loan or to be included in the environmental action plan. However, due to the implementation timing of TC 2, comprehensive and specific health and safety actions were not incorporated into the conditionality. The current health and safety practices at the Company were found to be very poor, significantly lagging behind normal industry practices because of: (i) obsolete facilities, limited budget and a lack of professional knowledge and capabilities in health and safety areas; (ii) low awareness of staff and weak determination for improvements; and (iii) the domestic standards that need to catch up with the EU directives.

The absence of the relevant conditions in the environmental action plan leaves future health and safety (H&S) improvements in the hands of Company management and at its discretion. During the evaluation, the OPER team had submitted a questionnaire to the Company as to whether or not PPE is exercised as required by the laws and also recommended by the consultants. The Company has not yet responded to the OPER team. PPE is only one simple example and many other normal practices were required and recommended. However, the Bank has little leverage to look into what is going on in the Company’s sites. Therefore, the corporate level transition impact of TC 2 is not relevant for the assessment unless more data and information come from the Company itself.

**6.3 Industry impact and impact on the economy as a whole**

The transition impact on the sector and the economy at large is assessed from two aspects: (i) introducing higher standards, that is, EU health and safety standards to the Company and good monitoring practices to the Ministry of Environment; and (ii) demonstration effects from the environmental TCs on the domestic industries and the public.

The OPER team considers that the transition impact on the industry and the economy at large is *Marginal* despite high magnitude potential at the TC inception stage.

**6.3.1 Introducing new standards**

The transition impact of TC 1 at a macro level is similar to the institutional transition impact within the Ministry of Environment as the ministry directly influences the environmental policy and practices for the country. TC 1 had large transition potential to raise the monitoring standard within the environmental authorities for the Company’s environmental impact. Domestic environmental
institutes and academics, which are often appointed by the government for environmental monitoring and surveys, have been struggling due to lack of funding and poorly equipped obsolete facilities. Inadequate monitoring for the Company has been a public concern in the country. TC 2 aimed to establish an adequate monitoring programme for the Company based on EU standards and to incorporate the programme into the environmental action plan. Procurement of necessary equipment for higher-standard monitoring was in the picture of the Bank’s ensuing environmental loan. However, this has not materialised. The new owner, according to the SPA, was obliged to prepare and agree with the government on the detailed environmental programme, including the monitoring plan. The Bank had no opportunity to review it.

The Company is a monopoly in the industry. Therefore, the transition impact of TC 2 at a larger level is considered similar to its corporate level impact. Undoubtedly every action that the Company takes has a significant impact, positive or negative, on the country. Given this fact, TC 2 had a large potential to make an impact on the country’s industry and economy. TC 2 originally aimed to contractually introduce health and safety practices at EU standards through the committed environmental action plan, which was not achieved due to the implementation timing difference. The unrealised TC aim has left transition risks with the management and owner of the Company. This gives rise to the possibility of resource exploitation (particularly the workforce) if the domestic regulations were not formulated or/and enforced properly. The question then arises as to by whom and how the Company’s health and safety practices are monitored.

6.3.2 Demonstration effect
Positive demonstration effects of the TCs are considered to be limited. Demonstration effects of the TCs are affected by dissemination practices of the project stakeholders. The Bank started formulating the TCs in its consultant procurement notices when they were formulated along with the privatisation in expectation of the environmental loan. The past EBRD Donor Report also mentioned the TCs and the loan.

An NGO representative sent a message to the Banking department. The representative claimed: (i) the environmental information about the Company at a public consultation organised by the Ministry of Environment was not sufficient; (ii) unavailability of data increased their concerns about the Company and the past environmental studies on the Company were not disclosed; (iii) the inadequacy of the legal framework, which imposed no penalty or sanction on the Company’s pollution and limited public access to the environmental information of significant polluters; and (iv) a reminder to the Bank to undertake its commitment to dealing with the Company’s environmental issues properly in the loan, as stated in the Bank’s project summary.

It was a critical time for the Bank in terms of whether to go with the Company in the future or simply to pull out of the deal. The loan operation leader responded to the NGO by saying that the Bank, through the loan agreement, required that the Company develop a public consultation and disclosure programme (PCDP) and that the baseline environmental report (the study under TC 2) would be released as part of the PCDP. To respond to the concern that there was a lack of environmental data, the loan operation leader mentioned TC 1, under which the Bank included “Review of Access to Environmental Information by the Public” into the terms of reference for the consulting services.

The TC 1 report was not disclosed to the public as the change of the counterpart staff resulted in less accountability for the study. As a result, the draft report was not commented on and therefore was considered to be final. However, the report is available any time upon request, while public

---

6 The ownership of the reports submitted under the TCs is held by the TC applicant (that is the Ministry of Environment). Therefore, it is for the Ministry to decide the degree of disclosure to the public.
interest did not focus on the TC 1 results. For TC 2, the report has been partly disclosed by the Ministry of Environment on its web site after serious public complaints.

6.4 Risks associated with transition potential
In the subject country, a large part of the economic system is structured to support the Company. In the past, the public misgivings grew and controversies arose since the Company and its important state assets, was operating in a closed circuit. Genuine public opinion appears to be demanding more information about the environmental impact of the Company. After the privatisation, the fact that the Company was no longer owned by the state but rather, privately owned, aggravated public sentiments that the unknown environmental risks would be legitimately withheld beyond the reach of the citizens. Public distrust could be stirred up and could subtly influence the equilibrium at a narrow margin between the coalition party and its opposition. Public interest in the Company should not be driven for political reasons to shake the government.

There is a serious communication gap between the government, the Company and the public. Sustainability, which the TCs aimed to incorporate into the Company, seems to be at *High* risk. The risks lie in the individual interest and personal agenda of stakeholders surrounding the Company including the public.

6.5 Environmental impact
The environmental impact of the TCs is assessed to be *Satisfactory* overall. There are some environmental changes as a result of the TCs. The TCs could have had significant potential for change if the consultants’ output was duly taken up by the Ministry of Environment and the Company.

Under TC 1, only incidental impact was made. Such impact was an unintended sideline impact. For TC 2, the Company must strictly exercise PPE practices in electrolysis, where the workshop has no longer been in the open air. This was strongly recommended in the consultants’ report and made clear to the Company’s representatives at the presentation of the findings. Since the Company has not replied yet to the OPER team’s questionnaire, the team has not been able to confirm that the Company has pursued the PPE practices.

On the other hand, there was an indirect negative impact of the epidemiological study conducted under TC 2. It relates to some dwellers in the Company’s neighbouring sites, who have received relocation allowance from the government due to perceived health risks. However, after the result of the epidemiological study was made available, they have decided not to relocate but to continue to stay, using the proceeds to expand their housing.

6.6 Country strategy and sector policies
The TCs and the loan were in line with the Bank’s country strategy and sector policies. The country strategy indicated that assisting the government in implementing and controlling a clear privatisation process that attracts local and foreign strategic investors was the key to better corporate governance. It clearly stated: “The Bank will cooperate closely with the Privatisation Agency during the implementation of privatisation and restructuring programmes. It is expected to gain pace because of reduced political uncertainty as a result of the recent agreement between the countries…..”

6.7 Additionality
Few issues exist on the Bank’s additionality for both the TCs and the loan. For the TC, the additionality was derived from the Bank’s capacity to formulate and implement the environmental
studies for the ensuing investment. Therefore, the TCs presupposed the Bank’s environmental loan. The TC’s additionality is **verified in all respects** in expectation of the Bank’s ensuing investment at the time of the project’s inception.

For the loan, it was evident that the government was in need of assistance for a transparent privatisation process that should be professional, fair and beneficial. The loan provided for the sake of a fair and transparent privatisation process mostly resulted in the intended outcome, that is, certain equilibrium of the bargaining powers between the industry giant and the government that was desperately eager to sell the Company. The gained equilibrium on negotiations therefore ultimately resulted in benefits for the citizens.

7. **Bank handling**

Bank handling is considered to be *Good*. The TCs have been handled by the Loan Operation team for inception and the Bank’s environment staff for design and implementation, and thereafter by the Resident Office. The TC operation team has dealt with the TCs diligently and professionally. Technical supervision and inputs from the TC Operation Leader steered the technical aspect and enhanced the value of the studies, which would otherwise have been largely diverted due to the change of the Bank’s investment agenda.

8. **Key issues and lessons learned**

8.1 **Incorporating sustainability into the privatisation process**

The Bank’s retreat from future involvement in the Company resulted in three outcomes. First, the TCs achievement was unsupported, second, the legally binding environmental action plan was less comprehensive in the sense that the TC outcome was not incorporated, and lastly the environmental action plan was implemented without financing, and was thus uncertain.

The privatisation aims to recoup the economic viability of the older institutions and enterprises. However, the privatisation economy rarely includes negative externalities such as environmental costs and pollution, which are not priced in the market. This is the case in many privatisation deals in the Bank’s countries of operations, which have generally focused on financial transactions and on the social welfare conditions of the existing workforce. The Company was no exception. One of the underlying reasons for placing the environment as a lower priority is the potential environmental costs that would make the assets more difficult to sell. The Bank and the authorities decided to deal with the environmental aspect separately, using the Bank’s environmental loan as an incentive for the new owner to properly undertake the environmental mitigation.

The major environment-related conditions for acquiring the Company comprised: (i) the implementation of the environmental action plan; and (ii) the amount for the environmental mitigation and improvement (decreased to €20 million as a result of the negotiations). The total costs to implement the environmental action plan were therefore capped at €20 million. Moreover, the detailed implementation plan was largely deferred to the Company and the research centre at their discretion.

The events during the course of the Company’s privatisation suggested that dealing with the environmental conditions separately in the negotiation process could possibly make the privatisation less environmentally sustainable. For instance, the dependency on the ensuing environmental loan made the required environmental actions less certain. If the privatisation tender documents had included specific environmental actions to be proposed by the bidders according to certain environmental requirements, the selection process would have been more committed to the
environmental outcomes. It would also have been less dependent on a possible financing from an external party\(^7\).

**Lesson learned:**

*Sustainable privatisation fully takes into account the environmental costs and related actions from the planning stage such as tendering.* A privatisation package needs to seek a good balance of economic and financial viability, social acceptability and environmental sustainability, particularly for the enterprises that have a significant economic (positive) and environmental (negative) impact on the country. In order to realise such an integrated package, the concerned parties should cooperate from the early stage of formulation for a privatisation strategy, which would allow the tender conditions to incorporate specific environmental requirements as integral parts of the proposals of the interested bidders, who would therefore voluntarily propose the actions to implement to win the tender.

### 8.2 The objectives diversion of the TC

The concept and purposes of the TC operation identified by the environmental due diligence appeared fairly valid. However, TC 1 struggled from the design stage to the end for many reasons and due to unexpected events. When the detailed tasks started forming, the original purposes, which were to prepare the monitoring programme for the Company, had already lapsed.

In theory, when a significant or critical change that would affect the TC objective occurs, the matter should be put before the Bank’s TC Committee for decision-making and guidance. Examples of this would include whether to cancel or terminate the TC, or change the TC’s scope and objectives or not, then to report to the donor constituency if the compelling changes affected the grant agreement. In the case of the TC cancellation, the associated consultancy services contract would have to be terminated as well. However, this is not a realistic solution when a consultancy services contract has already been effective. A practical solution would be simply to enhance the assignment even within the limitations. For TC 1, the consultants tried their best to achieve as much as possible since the original objective had not been met.

For TC 1, the process of conducting the study appeared more productive and worthwhile. Interviews with the Company, NGOs, various agencies, academics and institutes and organising roundtables were considered to be an unusual activity that had not been previously undertaken by the polluters and affected parties in the country. The idea of the roundtables was spontaneously added during the implementation when the tasks that the consultants could perform seemed limited due to the change in the situations.

The diversion of the objectives was also the case for TC 2. The TC 2 consultants were surprised when it became clear that the baseline would not help much to measure future improvements in the environmental action plan and that health and safety measures were not incorporated into the conditions in the environmental action plan. Nevertheless, their report generated unintended impact, which was a critical element for the new owner’s decision-making.

The TCs were implemented between the loan and the expected environmental loan. The implementation timing was difficult. The TCs were faced with major implementation obstacles: (i) although attached to the loan, the executing agencies were different (the privatisation agency or the loan and Ministry of Environment for the TC operation); (ii) the privatisation negotiation went

---

\(^7\) Including the proposal for more committed specific environmental actions on the privatisation tender is likely to reduce the number of interested bidders. However, the privatisation package could have been designed more attractively such as including raw materials suppliers and the fixed-utility prices for the first three to five years, in order to strike a good balance between the environmental costs and financial profits.
faster than expected; (iii) the Bank pulled out from further involvement after the loan; and (iv) public criticism mounted in the general election year.

Lesson learned:
Change of the relevance of the investment project can affect the implementation of the associated TC in a critical manner. The TC was expected to incorporate the value added into the investment framework and the institutional capacity. However, the TC was largely influenced by the investment project, to which it was attached. When the Bank’s commitment to the investment diminished, it was inevitable that the objectives of the TC became elusive and the expected value-added limited. The Bank could still enhance the value-added into operations manoeuvring the consultancy services within the TC scope, however, in a limited manner. Parts of the TC, although not following the original objectives, had positive effects which were appreciated locally.

8.3 Limitation of disclosure of TC results to public interest

The privatisation of the Company aroused significant debate in the country while the Bank’s loan, intended to adequately prepare for the privatisation, inevitably attracted both considerable public attention and expectations. Public concerns centred on the transparency of the privatisation process and the Company’s environmental state. Worries and controversy mounted even after the Company was acquired and privatised. The OPER team has been approached by various parties asking whether the Bank could make TC results public or at least available to them.

The Bank’s Public Information Policy does not specify that the results of TCs be made public. Therefore, the TC Completion Report is not for public disclosure, but the general rules require each TC completion to be reported to the donor in a specific format (that is, a TC Completion Report), thereby enabling each donor to exercise discretion regarding its publication. Some multilateral development banks (MDBs), which have high public sector projects in their portfolios, disclose the TC completion reports in printed copies and on web sites.

With respect to the consultant’s report financed from a TC, again some MDBs tend to respond to the demand for public disclosure and to include this in the coverage of the public disclosure practices. In the Bank, the consultants’ report is not included in the scope of public disclosure, while the extent of disclosure hinges on the ownership of the consultants’ report (that is, output of the assignment financed from TC). If the Bank is the hiring party for the consultant (called “Bank contract type”), all outputs belong to the Bank, including copyright. On the other hand, if the beneficiary (or recipient) of the TC is the contract counterpart for the consultant (called “contract type”), the report will be owned by the beneficiary, and thus be subject to the beneficiary organisation’s disclosure policy and practices.

The TC Committee applied the client contract type to the Company’s case given the nature of the studies. The Bank, not opting to disclose the TC outcome neither under a Bank contract nor a Client contract, deferred the ownership of the TC outputs to the beneficiary organisation. The Bank nevertheless took a proactive approach, which included assistance in “developing public disclosure policy” into the consultants’ assignment. The Bank’s aim was to enable the beneficiary party (the Ministry of Environment) to refine its public disclosure policy to satisfy the public. However, as explained earlier in this report, the findings and recommendations prepared by the consultants were appreciated by the beneficiary party, but not used for their practices.

---

8 The TC Committee selects the type of contracts according to the nature, aim and scope of TC and consultancy services to be procured.
The outputs of the TCs were partly disclosed to the public as a result of public pressure and litigations against the TC beneficiary/consultants involved. At the same time, major environmental information about the Company was kept confidential, due to it having already been a privately owned enterprise. The latter still causes public misgivings.

Lesson learned:
Difficulty in striking a good balance of disclosure for the TC findings in a privatised enterprise against keen public interest. The studies funded under the TC were conducted during the transition period from public to private ownership. When the state-owned enterprise, which had been subject to high public interest, was privatised, the Bank’s involvement in the process made civil societies question the Bank’s level of disclosure. In general, the Bank is not in a position to publish the results and outputs of particular TCs. In this project, the public disclosure policy of the TC beneficiary was the key in dealing with the public demand for disclosure and part of the TC findings was made available to the public owing to significant pressure from the NGO.