

**DOCUMENT OF THE EUROPEAN BANK  
FOR RECONSTRUCTION AND DEVELOPMENT**

# **ENVIRONMENTAL AND SOCIAL POLICY**

**Report On the Invitation to the Public to Comment**

## Report on Stakeholder Engagement: 2014 Environmental and Social Policy

### Introduction

In accordance with the 2011 Public Information Policy, stakeholder comments were requested during the review/revision of the 2008 Environmental and Social Policy (ESP). An additional early stage of commenting was introduced in 2013, requesting comments on the ESP prior to drafting revised text. A brief summary was prepared of the main issues raised in the early consultation, and disclosed on the EBRD website along with the draft proposed text of the revised policy for a second stage of comments.

The draft revised Environmental and Social Policy was disclosed on the EBRD website from 20 January until 5 March 2014 in English, Russian, and French languages. A series of public meetings was organised in Casablanca, Kiev, Tbilisi, Almaty, Moscow, Sofia, and London in February 2014, as well as a videoconference with Civil Society Organisations (CSOs) in Belgrade. This report comprises a summary of the comments received from clients, CSOs and others during the consultation on the draft revised policy. The comments have all been reviewed and reflected in the revised policy document as appropriate.

### Client Survey

ESD sought the views of clients on the proposed changes to the Environmental and Social Policy. Approximately 140 clients were surveyed, including both direct and indirect clients, private and public sector, and from a wide geographic range. Overall, the vast majority thought that the proposed changes were manageable and realistic, although many expressed the need for support from the Bank, either in terms of training and guidance or additional support during initial implementation.

The application of the mitigation hierarchy was recognised as appropriate, although support or guidelines from EBRD was requested with regard to certain changes. Similarly, the reduction in the level of greenhouse gas levels that would trigger reporting gasses (from 100,000 to 25,000 tCO<sub>2</sub>eq/yr), led to a need for guidance on methodology and interpretation of results, particularly for those clients who not have needed to report under the previous limits.

The introduction of the need to review the environmental and social performance of primary suppliers received a mixed response and was seen as particularly problematic for some clients operating outside the EU. Around half the respondents stated that they could accommodate this requirement, or already have a system in place or do so; however, the remaining respondents stated that this would be challenging. *‘This is not required by domestic laws... reasonable to meet for all international vendors but more challenging... for local suppliers’.*

In relation to health and safety requirements, the vast majority of responders agreed that the grouping of occupational, community, product, road and traffic health and safety in PR4 was logical and highlighted health and safety as a major issue for EBRD. Most were also appreciative of the need to undertake fire and life safety audits for buildings; follow good international practice for product safety; and to identify, evaluate and monitor potential traffic and road safety risks to workers and affected communities. Where issues were raised, these related to clarity on which EU standards would be applied, costs, and potential conflict with local laws. *‘Local standards are much lower than international standards, hard to justify additional costs... this is a local authority led process that investment companies are excluded from’.*

The plan for EBRD to disclose Category A Environmental and Social Impact Assessments (ESIAs) on the EBRD website was acceptable to clients, as was the annual EBRD update of project summary documents (PSDs) for Category A projects. When asked about the timing of ESIA disclosure, the majority were satisfied with 60 days disclosure requirement but would have concerns about any extension to the consultation period for ESIAs on private sector projects. Additional guidance on consultation was requested, particularly in relation to preparing a stakeholder engagement plan and on the principles of stakeholder engagement.

For Financial Intermediaries (FIs), the requirement to introduce an Environmental Management System was generally not seen as a problem, and most stated that they already had a system in place. Of those that did not, some commented that additional assistance would be useful, particularly in relation to IT systems to support the requirements.

The issue that appears to be the most challenging for FIs was the new proposed requirement that Category A sub-projects would need to meet the direct financing requirements of Performance Requirements 1-8 and 10, relying on EU standards, and this would be particularly challenging for FIs in non-EU countries which might not be

familiar with the EU requirements. A small number claimed that this would cause a competitive disadvantage and slightly less than half the respondents expressed a need for additional training and guidance from EBRD, particularly in relation to the implementation of EU requirements, categorisation and external communication. *‘We would need training or reference materials from EBRD to apply all requirements...such assessment are not commonly used by our bank’*. The requirement to disclose information on environmental and social issues was generally supported and many already do this through existing CSR/sustainability reports. However, some suggested that such disclosure would conflict with local legislation and most would require further guidance from EBRD on reporting. *‘[We have a] lack of experience in [this] area... we will need some guidelines on preparing public reports’*

## **COMMENTS AND MANAGEMENT RESPONSES: PUBLIC MEETINGS, INDUSTRY ASSOCIATIONS, INTERNATIONAL INSTITUTIONS, CONSULTANTS, AND CIVIL SOCIETY ON DRAFT ENVIRONMENTAL AND SOCIAL POLICY (ESP)**

The Bank requested comments on the basis of the draft revised Environmental and Social Policy from 20 January until 5 March 2014. Forty-nine sets of comments were received by the 5 March deadline, including comments from seven public meetings, two corporate stakeholders, a number of environmental and social consultants, and approximately 85 CSOs. The comments were divided by topic and the topics were organised into general comments, those relating to the Policy, and those relating to an individual Performance Requirement (PR). A column was added by the Bank to highlight the main topic in order to review multiple comments on the same issue together. In most cases, the language presented in the table below is consistent with the original submission; however, any country names or project/client names used as examples have been removed. General background information submitted was reviewed, but not included in the table of comments.

The areas in the draft policy and PRs receiving the most comments were on international law/conventions, the use of qualifiers (e.g. “where appropriate”), human rights, the Bank’s commitments reflected in the policy, and PR6 on biodiversity and living natural resources.

Key changes to the draft policy, in no order of priority, include:

### *The Environmental and Social Policy*

- The document was shortened by removing generic non-committal and/or aspirational statements and explanatory text.
- References were standardised to ‘Good International Practice’.
- The ESP emphasises the importance of human rights and that elements of human rights are addressed at the project level through the PRs.
- Explicit references to the need for potential gender impacts to be identified and addressed at the project level were introduced, as well as identification of gender opportunities in accordance with the Bank’s Strategic Gender Initiative.
- More emphasis on resource efficiency was introduced reflecting the Bank’s Sustainable Resources Initiative.
- The mitigation hierarchy was introduced as a conceptual approach which runs throughout the Policy and PRs.
- Respect of international conventions and treaties included, including reference to UNECE Aarhus and Espoo Conventions.

### *EBRD role and practices*

- Text was introduced to ensure clarity of scope in implementing the ESP and PRs:
- The definition of Category C projects was modified to recognise that limited appraisal will be carried out for these projects.
- More clarity was provided on whether requirements apply to the *project* or the *client*.
- Text has been added to require a level of assessment which is commensurate with potential risks and impacts.

#### *PRs 2 and 4: Health & Safety*

- Occupational and public health & safety were integrated under PR4 to present a holistic coverage of health and safety issues that may impact workers and communities.
- New text was included to address issues such as Traffic and Road Safety and Product and Services Safety and Universal Access.

#### *PRs 5, 7 and 8: Involuntary Resettlement, Indigenous Peoples and Cultural Heritage*

- More explicit reference was added to the need for (and difference between) socio-economic baseline studies and census amongst project-affected parties.
- Requirements for compensation related to displaced persons were included.
- Reinsertion of legal assistance for resettlement in PR5.
- Clarification that the Bank will refrain from financing projects which involve, or result in, forced eviction.

#### *PR6: Biodiversity/living resources*

- Clarifications were included as to when it is appropriate to apply an adaptive management approach versus a precautionary approach to biodiversity impacts.
- A reference to collection of baseline data commensurate to the significance of potential risk was introduced to manage expectations for exhaustive data collection irrespective of the significance of risks and issues.
- Requirements related to the financing of biofuels and biomass projects were added to reflect current practice.
- Requirements related to animal welfare were added to reflect current practice and align with EU requirements.

#### *PR9: Financial Intermediaries*

- FI sub-projects that would be categorised A are required to comply with PRs 1-8 and 10. The previous criteria in this respect (projects over \$10 million) have been removed.

#### *PR 10: Information Disclosure and Stakeholder Engagement*

- Structural changes and streamlining were to make the requirements more user friendly.
- Clarifications were included that detailed Stakeholder Engagement is required for projects that are likely to have adverse impacts.

As we move into the implementation phase, a number of guidance documents will be prepared and the comments will again be reviewed to take further suggestions into account.

The subsequent sections of this Consultation Report comprise the list of submissions received, followed by a table of comments and staff responses. As in the past, the commenters' identities for individual comments are not disclosed, so that the comments could be evaluated on their own merits. We believe that the policy and performance requirements have been greatly improved following the comment period, and are appreciative of the time and effort made by so many to help improve the documents.

#### **Commenters**

1. 4 February 2014 Public Meeting Casablanca
2. 7 February 2014 Public Meeting Kiev
3. 11 February 2014 Public Meeting Tbilisi
4. 14 February 2014 Public Meeting Almaty
5. 18 February 2014 Public Meeting Moscow
6. 21 February 2014 Public Meeting Sofia
7. 25 February 2014 Public Meeting London

8. 28 February 2014 Videoconference with Serbian CSOs
9. 5 March 2014 Meeting with CSOs, Berne
10. Arab NGO Network for Development (ANND)
11. CEE Bankwatch, paper, Casablanca
12. Corporate Sector Stakeholder (1)
13. Amnesty International
14. Centre for Energy, Environment and the Economy, Azerbaijan
15. Macedonian Sociological Association
16. Accountability Counsel, Amnesty International, ARTICLE 19, Center for International Environmental Law and CEE Bankwatch Network paper from 25 February London meeting
17. Egale Canada Human Rights Trust (ECHRT)
18. Bank Information Center
19. WWF paper distributed at London public meeting.
20. CH2M Hill
21. Corporate Sector Stakeholder (2)
22. Building and Woodworkers International (BWI) and International Trade Union Confederation (ITUC)
23. Heinrich Boell Foundation
24. Environ
25. Statement by CSOs in the Arab Region (24 CSOs listed)
  - a. Arab NGO network for Development (Regional)
  - b. Empowering Young Ladies Association, Bahrain
  - c. Phoenix Center for Economic Studies, Jordan
  - d. Palestinian Agricultural Relief Committees (PARC)
  - e. Social Democratic Forum, Yemen
  - f. Egyptian Center for economic and social rights
  - g. Egyptian Association for Collective Rights
  - h. Human Rights Center for Training and Information-Yemen
  - i. Lawyers for the Defense of Human Rights (Jordan)
  - j. Bahraini Transparency Society
  - k. Bahraini Human Rights Society
  - l. Sudani Civic Forum
  - m. Sudani Call for Development
  - n. Gender Center for Research and Training (Sudan)
  - o. Lebanese Woman Democratic Gathering
  - p. Lebanese NGO Gathering (Saida)
  - q. Iraqi Al Amal
  - r. Iraqi Women League
  - s. Bisan Center for Research Development (Palestine)
  - t. Palestinian NGO Network (PNGO)
  - u. Rural Woman Development Association (Palestine)
  - v. Tunisian Forum for Economic and Social Rights
  - w. Eco-Conscience (Tunisia)
  - x. Association Prospective and Developpement (Tunisia)
26. Compassion in World Farming

27. WCS
28. Accountability Counsel, Amnesty International, ARTICLE 19, CEE Bankwatch Network, Center for International Environmental Law, Centre for Research on Multinational Corporations (SOMO), and Human Rights Watch
29. UNECE Espoo Convention Secretariat
30. Centre for Environmental Information and Education, Bulgaria
31. EcoLur Informational NGO
32. Health and Environment Alliance (HEAL), Brussels
33. CEE Bankwatch
34. Gender Action
35. World Resources Institute (WRI)
36. Humane Society International, Four Paws, and Compassion in World Farming
37. Amnesty International comments on Indigenous Peoples
38. ERM
39. Ukrainian CSOs
  - a. National Ecological Center of Ukraine (NECU)
  - b. Institute of Zoology, National Academy of Science of Ukraine
  - c. WWF
  - d. Danube-Carpathian program, WWF
  - e. Information Center of UEA “Zelenyj Svit”
  - f. The National University of Life and Environmental Sciences of Ukraine
  - g. All-Ukrainian Environmental Leagues, Donetsk region.
  - h. European Dry Grassland Group, Uman
  - i. Eco-touristic club “Pathfinders”, Kharkiv
  - j. Podilsk Naturalists Society, Kamenetz-Podolsky.
  - k. GreenVideo, Kharkiv
  - l. NECU Youth branch
40. Social consultants (two individual)
41. Both Ends
42. IPIECA
43. ARUP
44. WHO
45. CIEL
46. Eko-svest, Macedonia
47. UNECE Aarhus Convention Secretariat
48. Birdlife International
49. ILO

	Ref.	Issue	Comment	Management Response
1.	Policy Review Process	Benchmarking	How did the EBRD study changes that were made by other IFIs in recent years and reflect these changes in the revised ESP (e.g. desktop assessments, face to face meetings, public consultation)?	The EBRD had an independent consultant undertake a benchmarking exercise against other IFIs for the policy and all of the Performance Requirements. Additional benchmarking was done on particular topics, such as human rights and health and safety. All IFIs who are part of the MDB Working Groups on Environment, Gender, Social, Biodiversity, and Information Disclosure and Stakeholder Engagement were also contacted during the policy preparation process.
2.	Policy	General: consultation outreach on policy.	At the meeting in Sofia, as far as I could notice, most (if not all) NGOs were coming from environmental sector. I didn't notice many representatives of the ethnic minority groups, or youth representatives, or organization of pensioners etc. How many of the non-environmental NGOs have information that certain project can impact population that they advocate? Environmental NGOs are fully interconnected, have strong external communication and are financially supported for monitoring EBRD activities. Thus placing a strong focus on them can cause ignorance to the important aspects of the social life of people living in the project area, particularly vulnerable groups like ethnic minorities, elderly, youth, women etc. So, I believe that a proactive and transparent approach and activities for engaging relevant specialized NGOs (not only environmental NGOs) when communicating public must become part of regular communication policy and practice of EBRD. Above all, projects that EBRD financially supports are for humans' purpose.	Thank you for this comment. EBRD has expanded its outreach to Civil Society Organisations in areas of social issues, gender, health and safety, and other topics, but more needs to be done. We are trying to build our contacts so that all interested organisations will know about opportunities to comment on strategies, policies, and EBRD's work.
3.	Policy	General: Translation	We suggest inserting the following after the title of the document: <u>(Official translation)</u> . I don't understand why the translation of the original document is intended only for the reader's convenience, it being intended for public discussion. Russian is one of the EBRD's working languages: in spite of this, as noted in the document, and the EBRD's endeavour to ensure reasonable faithfulness and accuracy of the translation, it is not guaranteed or confirmed by it. It is not clear why the EBRD and its employees will under no circumstances be liable for inaccuracies, errors, omissions, defects or changes of the text resulting from the translation of this document. And why the EBRD, having had every opportunity to ensure a faithful translation of this document, has failed to do so.	The Policy is approved by the Board of Directors in the English language, so that only the English text is authentic. In the event of any issues concerning the construction or interpretation of the Policy, reference shall be made only to the Policy as written in English and not to any translations into any other language. Therefore, translations into any other language, including working languages, carry a standard disclaimer. The Bank does, however, endeavour to ensure the accuracy of its translations.
4.	Policy	General: Competing sources of finance	Have new financing sources become available in EBRD CoOs, which have lower or no environmental and social requirements attached? Is EBRD experiencing competition for financing project based on lower requirements?	EBRD has been able to meet its business volume consistently and has not been affected by financing from other sources with lower requirements.

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5.	Policy	General: Scope	[We] welcome that the new Environmental and Social Policy (ESP) of the EBRD stresses the environmental legislation and principles of the EU, especially the precautionary principle, the polluter pays principle and the prevention principle. In fact, these principles need to be the guiding principles applied to all projects the EBRD engages in. The current form of the policy, however, still contains gaps in ensuring an adequate protection of people's (i.e. workers, residents and the general population) health from environmental risks.	We believe the requirements have been strengthened and are more effective than in the 2008 policy and we will be developing tools and guidance to help with implementation.
6.	Policy	General	The revised draft benefits from the now removed non-committal and aspirational language, thus the stated responsibilities of the Bank and its clients become succinct and precise. In addition, the specific recognition of the importance of human rights and corporate social responsibility, as well as the explicit integration of the gender aspect suggests a very positive element of the changes introduced. However, [we are] concerned about some changes which appear to water down the existing standards, and we are not sure this is the impression the Bank would be wishing to give.	Please see the final policy document. Following public consultation, many of the concerns have been addressed or approach clarified.
7.	Policy	General	The ESP has been dramatically changed. All aspirations have been stripped from the document. EBRD no longer leads the way. The ESP is now a compliance document.	Acknowledged. The proactive initiatives that the Bank is working on will be documented in the Sustainability Report and other documents.
8.	Policy	General: Prevention of impacts	The new ESP includes major changes. Some issues have been strengthened (e.g. language around EU law in PR3; forced evictions in PR5); however, there are other areas where we feel that the Bank has gone backwards. For example, the introduction of adaptive management in PR 1 and 6 requires less upfront environmental protection from clients. Adaptive management does not always work and cannot address all technical issues (e.g. project design parameters that are set at the project scoping stage). We would prefer to see stronger wording on impact avoidance included in the ESP.	Acknowledged. As per paragraph 6 of the ESP, EBRD will seek within its mandate to ensure through its environmental and social appraisal and monitoring processes that projects are designed, implemented, and operated in compliance with applicable regulatory requirements and good international practice. Central to EBRD approach is the application of mitigation hierarchy which prioritises avoidance of impacts as the preferred option.
9.	Policy	General	Proposed draft ESP has greatly improved from 2008 version.	Acknowledged.
10.	Policy	General	The proposed new ESP much improved from 2008 version.	Acknowledged.
11.	Policy	General	It is good to see this multi-stakeholder approach to consultation on the ESP.	Acknowledged.
12.	Policy	General	It is clear that environment and social management issues have been strengthened in the ESP; many technical issues have been addressed and/or introduced (e.g. water conservation/GHGs).	Acknowledged.
13.	Policy	General	It's a wonderful policy—but only if you implement it.	We agree!



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14.	Policy	General	First of all we would like to congratulate you on completing this massive task of revising the E&S Policy. Overall, we find the new version simpler and more straightforward (particularly PRs 1, 2, 5 and 10 which we focus on) and we hope that this will significantly assist with implementation of resettlement and stakeholder engagement activities.	Acknowledged.
15.	Policy	General: KPIs	The EBRD claims it is committed to promoting “environmentally sound and sustainable development” in accordance with its constituent treaty. However, this phrase is surrounded with ambiguity especially that the Bank yet proposes no concrete tools to measure the progress in achieving sustainable development. In this respect, <b>we demand that the EBRD designs and employs indicators (quantitative or qualitative) to measure the project’s contribution to sustainable development in each of its countries of operation.</b>	We are developing a set of Key Performance Indicators to measure the Bank’s impact at both the project and portfolio levels.
16.	Policy	General: New Technologies	[New technologies, such as] nanotechnology projects get high investments while there are still no comprehensive environmental and social assessments provided. There should be a special point in the EBRD ESP on nanotechnologies projects.	The policy does not go into specific technologies. In general, if a technology is not banned nationally or internationally we may consider a project involving this technology for potential financing. It should be noted that all projects are subject to the Bank’s Environmental and Social Policy requirements.
17.	Policy	General: Structure	Is there any possibility to separate the Environmental Policy from a Social Policy? It would be better to have them separate.	Environmental and social sustainability is addressed in an integrated manner at EBRD, similar to the approach adopted by most IFIs.
18.	Policy	General: Scope - Health	Health is actually much more of a cross-cutting issue than it reads in the draft policy document. While it is important to have a specific performance requirement related to health (I like that this now also encompasses both worker and community health), many health issues are directly associated with other performance requirement areas. Therefore, there should also be a provision– I think in PR1 – to ensure that all project related health issues (whether identified under PR4 or elsewhere) are appropriately addressed as needed.	We acknowledge this and are requiring our clients to assess and manage environmental and social issues in an integrated manner. Occupational and public health and safety are among the core elements of social sustainability. We have included a definition of “social” in the policy to clarify this.
19.	Policy	General: Scope - Animal Welfare	We have some concerns with the current ESP draft regarding the applicability, implementation, and enforcement of binding animal welfare standards. [We] would like to see these aspects clarified and strengthened. <b>Section B, Paragraph 8</b> While the end of paragraph 8 alludes to supporting relevant social and environmental issues, it is framed beginning with just the environmental component. We suggest the following rephrasing to make clearer the commitment to sustainable development as a whole: EBRD, as a signatory to the European Principles for the Environment, is committed to promoting <b>sustainable development, including EU environmental and animal welfare standards, and will apply relevant standards and GIPs</b> where these can be applied at the project level	We have clarified our commitment to promoting the adoption by EBRD financed projects of EU environmental principles and practices of EU in accordance with the European Principles for the Environment in paragraph 8.

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			<p>and, where appropriate in the context of the projects, include elements that focus upon priority environmental and social issues facing the relevant EBRD country or countries of operations.</p> <p><b>Section B, Paragraph 14</b>  While the precautionary principle is laudable and necessary, it should go beyond just environmental components. We suggest the following change:  EBRD will be precautionary in its approach to the conservation, management and sustainable use of living natural resources <b>environmental and social development, including the conservation, management and sustainable use of living natural resources</b>, and will require relevant projects to include measures to safeguard and, where feasible, enhance habitats and the biodiversity they support, <b>as well as other elements of sustainable development</b>.</p> <p>Further, there should be additional clarification of an approach to seek co-benefits or “win-wins” among sustainable development priorities and to avoid negative trade-offs. This is an extremely important principle for attaining the sustainable development goals of the ESP. The issue may arise where project options for meeting some PRs, or elements of PRs, could conflict with others. As an example, a livestock management practice adopted to mitigate greenhouse gas emissions (PR 3, paragraph 13) should not harm animal welfare (PR 6). Therefore, Section B, paragraph 14 should either be amended to make clear that the precautionary principle espoused by the Bank includes this element, or a separate paragraph should outline this following the current paragraph 14. We suggest the following:  <b>EBRD will seek co-benefits and avoid negative trade-offs in its approach to its sustainable development goals and implementation of PRs. As a part of this, investments will be evaluated for their effects on applicable elements of sustainable development listed herein, and options that promote co-benefits among goals and avoid negative trade-offs will be favoured.</b></p>	<p>Paragraph 14 is specifically about EBRD’s commitment to biodiversity protection and conservation and sustainable management and use of living natural resources. We believe we have equally strong commitments to safeguarding and promoting other aspects of environmental and social sustainability.</p> <p>We recognise and believe that the ESP and the PRs provide a comprehensive framework that is designed not only to safeguard environmental sustainability in a holistic way, but also to promote “win-win” approach. EBRD has a number of strategic initiatives aimed at identifying “win-win” opportunities, for example, in areas of gender equality and resource efficiency.</p>
20.	Policy	General: Scope – New PR	<p>There should be a new PR: PR 11 – Gender, sexual orientation and Gender identity. [Draft wording supplied.]</p>	<p>We have clarified definitions regarding discrimination and vulnerable groups and have included both sexual orientation and gender identity in the lists. We do not wish to have an additional PR on these issues, as we would then need parallel ones on many other topics. We believe that the current language is robust enough to cover many of the points of concern.</p> <p>In addition, we have forwarded the comments on internal EBRD Staff issues to</p>

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				Human Resources Department and Staff Council for consideration.
21.	Policy	General: Scope – sector-specific issues	Hydropower project issues are not addressed in ESP and not adequately in the Energy Strategy either. During the Energy Strategy consultations we understood hydropower criteria would be addressed in ESP.	ESP does not address sector-specific issues, but it sets out criteria that are applicable to all projects. Some of the specific hydropower sector issues are addressed in the Energy Sector Strategy and EBRD relies on and expects its clients to adhere to available good international practice guidance.
22.	Policy	General: Table of contents	<b>Provide a clear Table of contents like the 2008 EBRD E&amp;S Policy</b> The first clear reference to the Performance Requirements and their scope is on page 5, a Table of Contents listing the Performance Standards at the beginning such that the contents of the document are clear for all readers to see from the very beginning.	Table of contents will be included in the final version of the policy.
23.	Policy	General— Caveats	The Bank’s experience with the PCM has not strengthened the ESP, it has just created more loopholes for EBRD (e.g. inclusion of more caveats in the revised text: etc.).	We have reviewed the text and omitted a number of “where appropriate”, “where required” and ” as applicable” phrases.
24.	Policy		The draft is full of formulations like "where appropriate, when feasible, if available" etc. This might be due to some overactive legal advisors, but seriously casts doubt about the intention and commitment of the bank towards ecological and socially sustainable development. Just the word appropriate alone features 134 times in 71 pages.	
25.	Policy		Removing all of the aspirational statements in the policy changes the tone of the document, and makes it look over-protective of the Bank. Other conditionality, such as “where appropriate”, “if appropriate” should be removed from the policy.	
26.	Policy		The use of “where appropriate” seems to be used excessively in the text. More consideration should be given in each case, and consider deleting “where/if/as appropriate (either the standard exists or it does not exist). For example, we consider that “where appropriate” on p. 3, proposed para. 6, second sentence, should be deleted, because the Bank should <i>always</i> seek to structure the projects it finances to be guided by the relevant principles and substantive requirements of international law. If it is considered absolutely necessary to keep it, then there is a need to define “where/whenever appropriate” would be applied so as to avoid arbitrary use (proposed para. 36 of ESP, countless use through the text). Similarly, for the expression “commensurate and proportionate with the nature of the project/etc” (comes at least 8 to 10 times).	
27.	Policy	General - Terminology	We understand that the revision aims to streamline the use of terms “audit”, appraisal”, “assessment” and “evaluation”. However, there are some instances where the use of environmental audit is still employed	We have reviewed the terminology and made the use of terms “audit”, “appraisal”, “assessment” and “evaluation” more consistent.

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			and in other instances it has been replaced by “assessment” of “evaluation”. Perhaps there are good reasons for this, but it appears that the terms some times are used interchangeably (see proposed paras. 29 of ESP, para. 11 of PR1, etc). We also understand that the aim is to replace EBRD by “the Bank”. There are some instances, where EBRD remains (see para. 16 of the ESP).	
28.	Policy	Definitions: “Social”	There is no clear definition of scope of what is meant by “environmental” and “social sustainability”. In the absence of clarity about this, it can be interpreted either very broadly or very narrowly, the result being that the measurement of whether or not “environmental and social sustainability” has been achieved will be problematic.	We have included a definition of “social” to clarify the scope of the new E&S policy and our approach to environmental and social sustainability.
29.	Policy		<p><b>(3) Page 1: Purpose of this Policy</b>  The 2008 version the ESP Paragraph 2 reads as follows: <i>“This Policy covers the environmental and social dimensions of sustainable development. For the purposes of this Policy, the social dimension encompasses (i) labour standards and working conditions including occupational health and safety and (ii) community impacts such as public health, safety and security, gender equality, impacts on Indigenous Peoples and cultural heritage, involuntary resettlement, and affordability of basic services.”</i>  This explanatory language on social policy has been lost in the review, and should be reinstated.</p> <p><b>(ii) Page 1</b>  Similarly, <i>The EBRD’s Commitments</i>” in 2008, paragraph 3 reads <i>“3. The EBRD will seek to ensure through its environmental and social appraisal and monitoring processes that the projects it finances: are socially and environmentally sustainable respect the rights of affected workers and communities and are designed and operated in compliance with applicable regulatory requirements and good international practice.”</i>  This language should be reinstated.</p>	
30.	Policy		<p><b>Section A Purpose of this Policy</b> The removal of the explicit references to occupational health and safety and community impacts such as public health, safety and security makes the scope of the new E&amp;S policy less clear to readers.</p> <p><b>Re-insert the text used previously:</b> For the purposes of this Policy, the social dimension encompasses (i) labour standards and working conditions including occupational health and safety and (ii) community impacts such as public health, safety and security, gender equality, impacts on Indigenous Peoples and cultural heritage, involuntary</p>	

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			resettlement, and affordability of basic services.	
31.	Policy	Definitions: Displaced Persons	We did not see any requirements for the management of refugees in the ESP (this is a real issue in some countries).	We have amended the definitions of “social”, “non-discrimination”, “displaced persons” and “vulnerable people and groups” to include refugees, diversity, sexual orientation, gender identity, and minorities, to enable the ESP and PRs to provide safeguards and the ability to raise grievances with regard to these issues, if appropriate.
32.	Policy	Definitions: Diversity	I did not see any reference to Diversity in general; there are references to bio diversity but not diversity in general. As we know, EBRD values Diversity a lot, either I am mistaken or it is not the policy, it will be better if it is indicated and explained as a separate clause in the policy.	
33.	Policy		Our recommendations specifically urge the Bank to more thoroughly incorporate and mainstream sexual orientation and gender identity issues (SOGI) within its policies. Given the significant crackdown we are seeing against human rights for LGBT persons in many parts of the world, including in Eastern Europe, the need to include SOGI rights within the bank’s policies has taken on renewed importance. Acknowledging that the current EBRD draft specifically mentions sexual orientation in its Non--- Discrimination and Equal Opportunity section, the overall impression of the draft remains weak in terms of LGBT and sexual minorities. The draft does not reflect the importance of these issues, which have been addressed by many of the stakeholders of the EBRD in a substantial matter.	
34.	Policy		What is EBRD’s policy related to the protection of the rights of minorities?	
35.	Policy	Definitions: Stakeholders	[We] believe that appropriate and sustained stakeholder engagement is a critical enabler to the success of a project and its subsequent operations. We have comprehensive expectations, systems and processes in place to ensure that efficient and effective stakeholder engagement is integrated into and sustained throughout the entire lifecycle of a project (i.e., in concept selection and development planning, in the subsequent construction period, during operations and finally in the end-of-life phase). [We are] committed to engaging stakeholders who are either directly affected by a project or have a valid connection to or association with it. Throughout the Environmental and Social Policy and the Performance Requirements, EBRD uses the non-defined term “relevant stakeholders”, and in some instances advocates that the net be cast to include those stakeholders that may merely have an “interest” in a project. In [our] opinion, stakeholders in the “interested” category	EBRD definition of stakeholders is guided by good international practice, such as UNECE Aarhus Convention, which identifies the relevant public as both affected and interested and does not require people to demonstrate a connection to a specific project area or impact in order to comment or ask for information. In addition, EBRD is a public institution using public funds, and therefore it is accountable to the citizens and constituents of its shareholders who may be interested in various sectors or activities.

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			could embody entities with little or no local understanding of a project's aspects/impacts/risks and benefits and/or have no legitimate stake in a project. Accordingly, [we] recommend that the EBRD provide a clear and unambiguous definition of “relevant stakeholders” – a suggested definition (based on the stakeholders that [we] focus attention on) is as follows: “stakeholders who are either directly affected by a project or have a valid connection to or association with it”. In addition, it is recommended that use of the word “interested” be eliminated in the context of referring to stakeholders.	
36.	Policy		Stakeholders in the “interested” category could embody entities with no legitimate stake in a project, and the undefined term “relevant stakeholders” appears throughout the Policy and the PRs. Therefore we recommend that EBRD provide a clear and unambiguous definition of “relevant stakeholders” and eliminate the use of the term “interested stakeholders”.	
37.	Policy	Definitions: Mitigation Hierarchy	The draft introduces a mitigation hierarchy, Though priorities should be clear when mitigation is sought, it should be clear some projects are not acceptable, and mitigation is not a solution to the problems identified. This is especially the case in the field of biodiversity, where offsetting is considered as a solution. In most cases creating biodiversity of facilitating niches in another place might be an approach which makes investments seem acceptable, but in reality assumes a zero sum game, which does not exist.	The definition of mitigation hierarchy has been amended to expressly state that offsets are the last resort. We believe this is a universally recognised approach. Quality criteria for offsets that are acceptable have also been included.
38.	Policy		The term ‘mitigation hierarchy’ can be found across the ESP but is not clearly described: a more exhaustive description of this term and relevant methodology should be included in an Annex.	
39.	Policy		Throughout the text of the Environmental and Social Policy and the Performance Requirements, clients are directed to “mitigate (adverse) environmental and social issues and impacts” by applying the “mitigation hierarchy”. It is [our] recommendation that the EBRD consider adopting an alternative approach that is founded on ISO 14001 fundamentals and has a risk-based focus; this alternative approach is articulated in the following paragraph. A project's environmental and social <i>aspects</i> should be identified and assessed in the context of its environmental and social (and health and regulatory) <i>setting</i> ; the definition of “environmental aspect” as it appears in the ISO 14001 – Environmental Management Systems international standard is as follows: “(an) element of an organization's activities, products or services that can interact with the environment”. By extension, then an “environmental and social aspect” can be defined as being an element of an organization's activities, products or services	

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			<p>that can interact with the physical and/or human environment. Once an environmental and social aspects assessment has been completed, a project's potential environmental and social <b>impacts</b> can be identified and evaluated; the ISO 14001 definition of "environmental impact" is as follows: "any change to the environment, whether adverse or beneficial, wholly or partially resulting from an organization's activities, products or services". An environmental and social impact, then, is any change to the physical, biological and/or human environment, whether adverse or beneficial, wholly or partially resulting from an organization's activities, products or services. Finally, the <b>risks</b> associated with a project's (potential) environmental and social impacts need to be identified and quantified – those impacts with a low level of risk associated with them typically do not necessitate any active management (or mitigation) whereas impacts with higher levels of risk associated with them necessitate the development and implementation of appropriate management (mitigation) measures in order to reduce the level of associated risk to an acceptable classification. The most advantageous way of managing higher-level environmental and social risks is by systematically applying the "<b>avoid/reduce/remedy</b>" mitigation hierarchy, ideally in view of input received via stakeholder engagement. The "remedy" component of the hierarchy encompasses the concepts of limitation, compensation, and in those uncommon instances involving unacceptable residual biodiversity-related impacts/risks, offset. Accordingly, <u>throughout</u> the text of the Environmental and Social Policy and the Performance Requirements, it is recommended that "environmental and social impacts and issues" be replaced by "environmental and social risks" in most instances. Also, it is recommended that footnote 3 on page 1 (Policy) and footnote 1 on page 12 (Performance Requirement 1) be reworded as follows: "The mitigation hierarchy comprises measures taken to avoid creating environmental or social impacts from the outset of development activities, and where this is not possible, to implement appropriate measures that would reduce or remedy higher level risks associated with some environmental and/or social aspects and their related impacts". All other instances in the text where the mitigation hierarchy is referred to as "avoid, minimize, mitigate, compensate, offset" should be universally replaced by "avoid/reduce/remedy".</p> <p>In summary, [we] recommend that rather than focusing on mitigating environmental and social issues and impacts, the EBRD should base its (revised) Environmental and Social Policy and Performance</p>	

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			Requirements on managing the risks associated with identified and evaluated environmental and/or social aspects and their related impacts within the context of a project's environmental and social (and health and regulatory) setting; a priority should be given to applying the "avoid/reduce/remedy" hierarchy to mitigate those aspects/impacts with the highest level of associated risk.	
40.	Policy	Definitions: Good International Practice	Good International Practice – clarification of what are the minimum standards – there are regional differences of GIP, e.g. between [SEMED countries and the FSU]?	We have ascertained our definition of Good International Practice is consistent with universally recognised definition adopted by a number of our peer institutions.
41.	Policy	Para 5	[It should be clear] who sets this reasonable time period, will this be set out in project contracts. Some impact can occur over a short space of time, but impacts can occur throughout the life cycle of a project. Adaptive management and the mitigation hierarchy should be implemented immediately.	The "reasonable period of time" is a commonly used legal concept, for example in EU Directives. It is agreed on case-by-case basis between EBRD and the client and always has to be acceptable to EBRD. We acknowledged the need for early application of adaptive management and the mitigation hierarchy.
42.	Policy		We think that the sentence should read "... that <i>all</i> projects" are <i>required</i> to meet".	We believe the current wording in paragraphs 4 and 5 has the same effect.
43.	Policy		<b>First sentence:</b> Given the very high importance the Bank places on Clients adhering to the Performance Requirements, and in order to be consistent with proposed para. 4, we recommend to change the wording of para 5 to "that <i>all</i> projects are <i>required</i> to meet". <b>Second sentence:</b> We consider that the phrase "reasonable period of time" is very vague. To protect the Bank, we suggest that it should be made clear that the Client will manage the environmental and social issues associated with the project "for the duration of the Client's Agreement with the Bank, and for a reasonable period of time thereafter."	The Bank has no legal leverage in respect of its clients beyond the duration of the financing agreement.
44.	Policy	Para 7: International Conventions	The previous policy stated that EBRD would not knowingly finance projects that would contravene national obligations under international law. This is missing from the draft.	This statement has been re-inserted.
45.	Policy		Important to follow the principles of international conventions – does the revised ESP include these principles or a commitment to do so?	This is included in paragraph 7 of the policy.
46.	Policy		Footnote 5. We suggest to insert current proposed footnote 5 after the words "procedural and substantive requirements of EU"; and then to insert a new footnote 6 to link to a new annex which would provide an easy checklist of the international instruments mentioned throughout the policy and PRs. The checklist should state that it is not exhaustive – there may be other international treaties relevant to a specific project, and the list of treaties is growing), but an annex would be helpful to	Paragraph 7 has been modified to cover the principles and substantive requirements of international conventions and paragraph 8 EU principles and practices. "Where appropriate" has been omitted.  We believe such a checklist would be more fit for purpose for a guidance note to the policy than the policy document itself.



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			provide a basic reference to applicable international standards.	
47.	Policy		<p>Modify the sentence as follows: “EBRD recognises the and the ratification of international environmental and social agreements, treaties and conventions by its countries of operations and adoption of the provisions of EU environmental legislation by EU Member States and Candidate Countries. Within its mandate EBRD will, where appropriate, seek to structure the projects it finances to be guided by the relevant principles and substantive requirements international law, such as Espoo convention and its Protocol on SEA, and of the EU.  <i>[note: international law should be prioritized, with a specific reference to the relevant treaties – we suggest that similar approach is followed in other places of the ESP and the PRs].</i></p>	
48.	Policy		<p>Given that international law is applicable to all of the Bank’s shareholder countries and countries of operation, we suggest that para 7 be slightly revised to mention international law obligations before EU law. For example, “EBRD recognized the ratification of international environmental and social agreements by its countries of operation and the adoption of the provisions of EU environmental legislation by EU Member States and Candidate Countries. Within its mandate EBRD will seek to structure the projects it finances to be guided by the relevant principles and substantive requirements of international and EU law.”</p> <p><b>Second sentence:</b> To send a strong signal of good governance, please delete “where appropriate”. The Bank should always seek to structure the projects its finances to be guided by the relevant principles and substantive requirements of EU and international law. It would be highly inappropriate for the Bank to ever seek not to do so, thus “where appropriate” is redundant.</p> <p><b>Footnote 4:</b> We suggest to move current footnote 4 to sit against the word “EU” and then to insert a new footnote 5 giving a link to a new annex to the ESP which would provide a one-stop checklist of the international instruments mentioned throughout the ESP and PRs. The checklist should of course state it is not an exhaustive list (as there may be other international conventions relevant to the specific project), but it would be helpful quick reference for both Clients and stakeholders.</p>	
49.	Policy		If the Bank is committed to promoting "environmentally sound and sustainable development" the wording of <i>where appropriate</i> doesn't sit well. suggest deleting.	
50.	Policy	Para 8:	The Policy has not fully ensured that the environmental and social	Paragraph 8 of the policy has been amended to clarify that: “ <i>EBRD, as a</i>

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		EU and national standards	rights of the people in countries of EBRD operation are adequately safeguarded from potential adverse environmental and social impacts of EBRD-funded investments, such as in Central and Eastern European Countries.	<i>signatory to the European Principles for the Environment, is committed to promoting the adoption by EBRD financed projects of EU environmental principles and practices, where these can be applied at the project level, regardless of their geographic location. When host country regulations differ from EU environmental standards, projects will be expected to meet whichever is more stringent."</i>
51.	Policy		We are happy to have the EU standards as the minimum standards; however this is not a commitment in the draft. What is written is "where appropriate," "when applicable" and other phrases that diminish the commitment.	
52.	Policy		It is not clear which EU standards will apply. This is too vague for clients to apply, as well as for civil society.	
53.	Policy		EU E&S requirements are more stringent than those in many non-European countries. What is the Bank's approach to operating in non-EU countries concerning the application of EU standards?	
54.	Policy		<p><b>EU standards in non-EU countries and additionality (ESP)</b> The application of EU standards presents a major opportunity for the EBRD to bring added value to projects in non-EU countries with weak environmental legislation and regulatory capacity. Further to high technological standards, EU legislation is superior in its requirements for transparency and public participation in decision-making, which are instrumental for democratic and efficient management of natural and financial resources. As a signatory of the European Principles for the Environment the EBRD is committed to apply EU standards and principles for environmental protection, and the new ESP draft reiterates this commitment. The 2008 policy language was very aspirational, but not binding, which indeed was not helpful, hence expectations were that the references to EU directives would have been clarified and strengthened, clearly stating which ones will be applied. Instead many of these references have been deleted (eg. in PR 6 on Biodiversity conservation) and application of EU law is left to the discretion of the bank on a case-by-case basis, eg. by conditioning it with "where appropriate", "where applicable" and "subject to" etc..</p> <p><b>Recommendation:</b> The strongest and clearest formulation is in PR 3 (on Resource efficiency and pollution abatement and control), that requires that EU law will be applied if more stringent than national law and clearly states which Directives are in question. This would be the approach [we] would recommend also in all other PRs. Alternatively an overall, unconditional commitment to apply all EU law and standards could be stated in the first part of the policy on the EBRD's commitments.</p>	

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55.	Policy		In PR 3 of the ESP, EBRD indicates that EU law will be applied to the projects that the Bank finances. Why is this not repeated/applied across all PRs (e.g. PR 5, 6 etc.)?	
56.	Policy		[We expected the new revision to have] the references to EU directives would have been clarified and strengthened, clearly stating which ones applied*. Instead, many of these references have been deleted (e.g., in PR6 on Biodiversity conservation) and application of EU law is left to the discretion of the Bank on a case-by-case basis, e.g., by conditioning it with “where appropriate”, “where applicable” and “subject to” etc. The strongest and clearest formation is in PR3 (on Resource efficiency and pollution abatement and control), that requires that EU will be applied if more stringent than national law. This would be the approach [we] would expect to see also in all other PRs or as an overall, unconditional commitment in the part of the policy on the EBRD’s application of EU law and standards. *The EBRD has stated that some EU legislation cannot be applied on the project level (e.g., Strategic Environmental Impact Assessment) and it is important to clarify how the Bank will approach such legislation.	
57.	Policy		What is the added value of EBRD, if your standards defer to local legislation/standards which are often weak?	
58.	Policy		Where national standards are less stringent than EU standards (or internationally recognised good standards), compliance with the latter should be required, notably to avoid environmental and social “dumping” approaches.	
59.	Policy		National legislation – e.g. social national legislation or regional or local – for IPs regional standards should be applied because there is no applicable Federal laws – could it be clarified in the ESP what the applicable regulations are?	
60.	Policy		Unified standards should apply on projects – not variations from project to project/region to region/country to country.	
61.	Policy		The Bank should not accept projects as they are, accepting the approval of national authorities.	
62.	Policy		EU vs national regulations – sometimes one or the other is stricter – EBRD should apply the strictest standards.	
63.	Policy		It is a problem that EBRD heavily relies on local authorities and courts. EBRD should not support projects or work with clients based on local authorisations only. E.g, land rights issues and compensation relating to a renewable energy project. Permits acquired too quickly and too	

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			easily, or revoked for corruption reasons.	
64.	Policy		We are supportive of the EBRD's mandate to promote EU environmental standards in the countries where its supported projects are located in order to raise performance (see for example paragraph 8 of the Environmental and Social Policy). However respect for the primacy of a host country's environmental regulatory regime must be maintained.	It is stated in ESP paragraph 5 that: <i>"EBRD will seek within its mandate to ensure through its environmental and social appraisal and monitoring processes that projects are designed, implemented, and operated in compliance with applicable regulatory requirements and good international practice."</i>  and in paragraph 34 that: <i>"Compliance with relevant national law is an integral part of all PRs."</i>
65.	Policy		[We] support the existence of prudent and achievable environmental and regulatory requirements in the countries in which it operates, and we are supportive of the EBRD's mandate to <u>promote</u> EU environmental standards in the countries where its supported projects are located in order to raise performance (see for example paragraph 8 of the Environmental and Social Policy). However, it is inappropriate for the EBRD to <u>demand</u> that the projects it supports outside of the EU <u>meet</u> EU Environmental Requirements – numerous references to this expectation are embodied in Performance Requirement 3 (including extreme statements such as "regardless of location" – see PS3, paragraph 9 for example). Promotion of the EU's Environmental Requirements (and standards) is one thing, but <u>demanding compliance</u> in a sovereign nation outside of the EU is another matter. Respect for the primacy of a host-country's environmental regulatory regime should be a fundamental premise of the EBRD. Similarly, it is observed that the EBRD (inappropriately) mandates adherence to EU Occupational Health and Safety Standards outside of the EU (see Performance Requirement 4, Paragraph 13).	
66.	Policy	Para 9: Business and Human Rights	The ESP explicitly promotes human rights & gender equality – can the EBRD also integrate the requirement to protect children's rights in the revised ESP?	Human rights cover the rights of children, for example in relation to prevention of harmful forms of child labour, (EBRD PR2, paragraphs 9 and 10), adequate housing and education in the event of resettlement (PR5, paragraph 6) and Indigenous People (PR7).
67.	Policy		Introduction of Human Rights welcome – will be important for Ukraine.	Acknowledged.
68.	Policy		What is EBRD's policy to help support "imprisoned populations"?	The Policy covers the issue of forced labour in PR2.
69.	Policy		We are supportive of the previous comments on Human Rights. The current text is weaker than previous text. We welcome the mention of sexual orientation in the definition of vulnerable people. We would suggest that you need a separate PR dealing with Gender and Sexual Orientation.	We believe that this issue is addressed by mainstreaming it throughout the policy and PRs. Thus the issue is now explicitly covered in PRs 1, 2, 5 and 10.
70.	Policy		The European Bank for Reconstruction and Development's new draft Environment and Social Policy weakens the Bank's existing safeguards on human rights. The Bank and its member States must reconsider this	A number of PRs have been amended to explicitly address human rights so as to prevent EBRD financed projects from causing, contributing to or exacerbating human rights violations.

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			backward step. They should use this opportunity to put in place policies and systems to ensure that the Bank takes all necessary steps to prevent it from causing, contributing to or exacerbating human rights violations.	The commitment that “EBRD will not knowingly finance projects that would contravene country obligations under relevant international treaties and agreements.” has been re-inserted in paragraph 7 of the policy.
71.	Policy		<p><b>Commitment to Human Rights Law Effectively Removed</b> The Bank must be guided by the Agreement Establishing the European Bank for Reconstruction and Development (EBRD), which commits the Bank to fundamental principles including the rule of law and respect for human rights. The Bank also has a responsibility to act consistently with the obligations of its member States under international human rights law. However, the draft policy takes several steps back from the Bank’s existing human rights commitments. Significantly, it eliminates language present in the current policy which states that the “EBRD will not knowingly finance projects that would contravene country obligations under relevant international treaties and agreements related to environmental protection, human rights, and sustainable development...” Instead, the draft only commits the Bank to “where appropriate, seek to structure the projects it finances” to be guided by relevant principles and substantive requirements of EU and international law. Under the draft policy, projects funded by EBRD will only be required to follow “good international practice” rather than international environmental and human rights law and standards. The previous text should be retained in the policy and the term “knowingly” replaced with a commitment for the Bank to take every necessary step to become aware of potential negative impacts that may contravene country obligations under international law and its own responsibility to respect human rights. Both the existing and draft policy are narrowly defined as they omit any reference to international customary law and prevailing international standards as benchmarks. Under the draft policy, the Bank’s assessment process could avoid considering whether projects are consistent with international treaties binding the relevant country, thus seeking to comply with human rights only when the Bank wishes to do so. The revised policy should include an express commitment that the Bank will uphold international human rights in all of its operations and will not support activities that are likely to cause, contribute to, or exacerbate human rights abuses. The policy should also make clear that the Bank will take appropriate action to ensure an effective remedy where the projects it finances cause or contribute to human rights abuses.</p>	

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72.	Policy		The limited commitment to applying EU and international law requirements counts also for safeguarding human rights. The new draft of the ESP (in Paragraph 9 under the EBRD's Commitments) focuses on the responsibility of business to respect human rights, but not on the obligations of states and public institutions (such as the EBRD) to protect human rights, which is far from ideal in many of the EBRD's countries. A footnote clarifies that the EBRD " <i>will be guided</i> " by the International Bill of Human Rights, the UN Declaration of Human Rights and the ILO's eight core conventions, however this is neither binding nor sufficiently ambitious-the Bank should instead " <i>require compliance with</i> " the safeguards provided by international human rights law. [We] expect a specific and explicit commitment on the part of EBRD to respect and protect human rights in all its investments and to avoid investments where these cannot be guaranteed.	
73.	Policy		The Bank is a major lender to corporations. Although one of the changes proposed is specific recognition of the responsibility of businesses to respect human rights, the policy does not put in place systems to ensure that clients actually respect human rights in projects supported by the Bank. The policy should be revised to commit the Bank to require its private clients to comply with relevant international standards, such as the UN Framework and Guiding Principles on Business and Human Rights, and to respect human rights in practise. The Bank should only provide funding to companies that commit to, and show respect for, human rights.	<p>The revised Policy includes explicit language on business and human rights "EBRD recognises the responsibility of clients and their business activities to respect human rights<sup>1</sup> and that this is an integral aspect of environmental and social sustainability. This responsibility involves respecting human rights, avoiding infringement on the human rights of others, and addressing adverse human rights impacts that their business activities may cause, or to which they may contribute." This language is inspired by the Guiding Principles on Business and Human Rights and reflected in a number of PRs (e.g. EBRD PR 1, paragraph 8). We do not think that a specific reference to the Guiding Principles is required at this stage (a reference will be made in the guidance notes to the Policy which is under preparation). Furthermore, many of the core principles of the Guiding Principles such as the necessity of an effective grievance mechanism have been incorporated throughout the PRs.</p> <p><sup>1</sup> For purposes of this policy, EBRD will be guided by the International Bill of Human Rights, the UN Declaration of Human Rights and the eight core conventions of the International Labour Organization.</p>
74.	Policy		Paragraph 9 has no reference to the UN Framework on Business and Human Rights. The implications of the framework are not fully appreciated. The framework distinguishes state duty from enterprise's responsibility. The sections in PR 2, 5, 10 on grievance procedures do not seem to have reflected the framework—so it just looks "bolted on" to the policy. The focus on content control and leverage is dated thinking. You need to be talking about the <i>relationship</i> between the company and the supply chain.	
75.	Policy		One of the most significant developments since the adoption of EBRD's ESP Performance Requirements in 2008 has been the endorsement in 2011 of <i>The UN Guiding Principles on Business and Human Rights</i> by the UN Human Rights Council. Although Paragraph 9 raises the crucial issue of Business and Human Rights, it does not mention this important instrument which should be recognised by the EBRD as the main reference point concerning business behaviour in	

<sup>1</sup> For purposes of this policy, EBRD will be guided by the International Bill of Human Rights, the UN Declaration of Human Rights and the eight core conventions of the International Labour Organization.

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			<p>the social area. The footnote that corresponds to Paragraph 9 names the international instruments cited in the Guiding Principles but does not mention, as the UN Guiding Principles do, the need to consider additional standards in some circumstances.</p> <p>The EBRD would do well to recognise the implications of this instrument for its Performance Requirements. We suggest that the text of each Performance Requirement be reviewed for the following three aspects of the UN Guiding Principles:</p> <p>1. <i>The setting forth of due diligence as the basic expectation of responsible behaviour for its clients.</i> The Guiding Principles manifest a high degree of consensus for a new expectation for responsible behaviour in the form of due diligence which is considered the process by which business enterprises identify, prevent, mitigate and account for how they address their adverse human rights impacts. As there is very little in the social dimension that cannot be directly related to the spectrum of internationally recognized human rights, this understanding of due diligence should be made the fundamental expectation for EBRD clients. Moreover, the expectation of due diligence is also an appropriate expectation in other areas such as environmental impact. Indeed, in the revision of the OECD Guidelines for Multinational Enterprises finished in 2011, the due diligence expectation was extended to most areas covered by the OECD Guidelines including the environment.</p> <p>2. <i>The relationship of “leverage” to responsibility.</i> The existence of “leverage” (or “control”) by one business enterprise over its business relationships does not create or diminish responsibility. Responsibility for any business enterprise is created by adverse impacts that are caused by or contributed to by the business enterprise or that are linked directly to its operations.</p> <p>3. <i>The purpose of grievance mechanisms.</i> The call for grievance mechanisms in the various Performance Requirements should indicate that the main purpose of these mechanisms is to provide remedy. Many enterprises, business associations and initiatives establish grievance mechanisms where there is no real intent to provide remedy. In this regard the effectiveness criteria set forth in Principle 31 of the UN Guiding Principles should be incorporated into the provision for grievance mechanisms in the Performance Requirements that call for grievance mechanisms. An important qualification of a grievance mechanism in the UN Guiding Principles is that it should not “be used to undermine the role of legitimate trade unions in addressing labour related disputes, nor to preclude access to judicial or other non-judicial</p>	

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			grievance mechanisms”. Consequently, the language in PR 2 should replace “substitute for grievance mechanism provided through collective agreement” with “not be used to undermine the role of legitimate trade unions” which will better cover the likely abuses.	
76.	Policy		Given the strong statement about human rights in para 9 on page 2, a document search revealed no references to the UN Guiding Principles on Business & Human Rights in any section. This is a missed opportunity to give the UNGPs greater visibility.	
77.	Policy		ESP para 9 is weak, it’s not even a commitment. If you compare with e.g. para 15 on transparency etc., HRs are not given the same importance. There should be a firm commitment to respect the principles of the Ruggie Framework?	
78.	Policy/PR1		What is the issue with HR? Would EBRD Board not accept specific language and commitment? Would it be difficult for EBRD to require its client so undertake HR assessments/due diligence?	
79.	Policy/PRs		Why only a few HRs addressed in PRs and not all of them in line with Ruggie principles? All HR should be addressed and not only those deemed relevant.	
80.	Policy		<p>The draft policy does not require the Bank to independently verify the human rights social and environmental impacts of clients’ projects, other than by reviewing the clients’ reports. There is a serious conflict of interest if the client, who stands to benefit if the project is approved, is delegated the responsibility from the EBRD for assessing the potential and actual impact for the EBRD. It is unacceptable for the EBRD to distance itself from its responsibilities for the impacts of its funding. The lack of independent verification by the Bank is made worse because potentially affected people are given neither the necessary information nor the opportunity to raise concerns about projects at an early stage in the Bank’s decision-making process. As a result, they are unable to participate in decisions as to how potential negative impacts can be addressed early on and managed.</p> <p>Furthermore, the draft policy does not require the Bank to ensure that businesses it finances implement best practice for human rights due diligence, as reflected in the UN Framework and Guiding Principles on Business and Human Rights. This includes: a human rights policy, a human rights impact assessment when the risk of a human rights abuse is identified, tracking and reporting on implementation and access to effective remedies. The Bank must require its clients to act in line with widely-accepted standards on business and human rights, otherwise it risks providing support to projects linked to human rights abuses.</p>	PR 1, paragraph 8 provides that, in cases where human rights issues not covered under the ESIA are identified further studies focusing on specific risks and impacts may be required. EBRD will assess if the intervention of external experts will be required or if internal due diligence by EBRD staff will be sufficient.



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81.	Policy		<p><b>Weakening of Human Rights safeguards</b></p> <p>The proposed new draft of the ESP further weakens the EBRD's commitment to the protection of human rights, which was previously not strong enough, as demonstrated in several projects [...] in the last three years. The policy lacks an explicit commitment to apply to projects it finances a number of international treaties, instead relying only on domestic law and international conventions that are ratified by the country of operation. Most importantly the draft fails to integrate proposals for the inclusion of human rights risk assessment and impact assessment as part of the due diligence of projects and in the designing of country strategies. Although the bank claims that 'gap analysis' is regularly performed to guide the designing of mitigation measures for the projects, this is done on a case by case basis and leaves a lot of space for discretion.</p> <p>Additionally, the commitments towards country and sectoral strategies have been shrunk, not expanded, and therefore the recommendations of how safeguards should be mainstreamed through enhanced strategies and policy dialogue have not been taken into account.</p> <p><b>Recommendations:</b> We would like to raise again our recommendations from the first round of consultations, namely:</p> <ul style="list-style-type: none"> <li>● Country strategies (CSs) should include an assessment of the capacity of the state institutions to protect human rights and to provide redress for grievances of citizens from harm caused by business, including by state-owned companies. Additionally, CSs should set concrete strategic objectives for promotion of better respect and protection of human rights that investments in the given country will aim to achieve.</li> <li>● Sectoral strategies and policies should similarly assess the capacity of the industry (eg. the extractive industry) and of the countries of operation to Protect, Respect and Remedy, i.e. to implement the United Nations Policy Framework For Business And Human Rights, and should set strategic sectoral objectives with regards to human rights.</li> <li>● In order to prevent reputational and operational risk, and to improve the overall social corporate responsibility of its clients, due diligence should be improved to better pick up human rights problems as social factor investment risks. For example, due diligence should acknowledge disputes and pending court cases against the company, as part of setting a less biased baseline against which Stakeholder Engagement Plans (SEPs) and Environmental and Social Action Plans (ESAP) should be designed.</li> <li>● As part of Social Impact Assessment, Human Rights Impact</li> </ul>	<p>EBRD believes that the issue of human rights has been strengthened, in particular, EBRD PR1, paragraph 8 has been amended to require the client's environmental and social assessment process to cover all relevant direct and indirect environmental and social impacts and issues of the project, including human rights risks and impacts.</p>

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			<p>Assessment should be carried out for the whole operation, without a limitation being imposed by a narrowly defined project area of influence. This approach should especially apply for regular clients of the bank, who repeatedly receive investments for various sides of their business.</p> <ul style="list-style-type: none"> <li>● SEPs should define clearly the communities and households, whose rights will be threatened or negatively impacted by the project. They should be distinguished from the range of institutional stakeholders, such as police forces or fire departments, and should be consulted separately prior to approval of the SEP by the EBRD and signing of the project.</li> <li>● Progress with implementation of the SEP or ESAP – for example by setting up a grievance mechanism for project-affected people – should be a contractual condition for disbursement of investments.</li> <li>● The EBRD should provide up-to-date information on the implementation of the project, on mitigation of anticipated human rights and other adverse impacts, including progress with SEO and ESAP implementation. This should be done through PSD up-dates, as well as monitoring data disclosure on the client's web site, and disclosure by the bank upon request.</li> </ul>	
82.	Policy		<p><b>Human rights.</b> In our view, the proposed policy does not offer sufficient human rights protection, since liability rests with business entities, while government authorities and the EBRD itself bear no liability at all. At the same time, experience ... shows that people have been deprived of their private property and land so as to allow projects which are of no interest to the people themselves to be implemented. Government authorities take land away from communities and from land owners, applying pressure in violation of the law and of human rights. The judiciary is also put under pressure. Where there are no guarantees of the protection of human and ownership rights, democratic development institutions as represented by the EBRD should themselves become guarantors and demand that all stakeholders, the government and business observe and protect human rights in all their investment projects, and avoid investments which cannot guarantee those rights.</p>	
83.	Policy		<p>Human Rights – many countries have not ratified international human rights conventions. Can EBRD play a role in and/or influence those countries who have not ratified these conventions to improve their domestic standards/international commitments?</p>	
84.	Policy/PR1		<p>There should be an overarching human rights due diligence process.</p>	

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85.	Policy		The Bank must be guided by the Agreement Establishing the European Bank for Reconstruction and Development (EBRD), which commits the Bank to several fundamental principles including the rule of law and respect for human rights.	
86.	Policy		How will the Bank be taking into account human rights issues particular in the context of [country]?	
87.	Policy		<p>EBRD should ensure that the ESP includes:</p> <ul style="list-style-type: none"> <li>• A requirement for adequate human rights due diligence by the Bank and recipients of funding;</li> <li>• Revisions to the Performance Requirements (PR) to bring them in line with relevant international human rights law and standards; and</li> <li>• Systems for effective implementation and monitoring of the ESP and its PRs, including oversight of the impact of projects on human rights.</li> </ul>	See responses above.
88.	Policy		We are not happy with the proposed watered down HR requirements, while at the same time there have been significant HR issues on EBRD projects.	
89.	Policy		<p>The EBRD should explicitly reference the international human rights instruments that the EBRD will draw upon. In particular, the EBRD should commit not to contravene countries' human rights obligations under the following instruments: the International Bill of Human Rights, the eight core labor conventions, and human rights treaties that the borrower country has ratified. This should also include instruments related to the rights of individuals belonging to particular groups (such as indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families). In fragile and conflict-affected states, it may also be necessary to apply instruments related to international humanitarian law.</p> <ul style="list-style-type: none"> <li>• When designing a country strategy, the EBRD's research process should be based on the authoritative reports released by the UN. This includes, for example, reports and decisions by the Human Rights Council, periodic reports by UN treaty bodies, and reports by the Special Procedures of the Office of the High Commissioner on Human Rights.</li> <li>• <b>Provide stronger guidance on how EBRD's clients should meet their responsibility to respect human rights.</b> Paragraph 9 of the proposed policy suggests: "EBRD recognizes that the</li> </ul>	

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			<p>responsibility of business to respect human rights is an integral aspect of sustainable development.” This language should be strengthened to require businesses to respect human rights and to limit EBRD financing of businesses that do not respect human rights. Moreover, although not explicitly referenced in the draft, we understand the aforementioned language to define the business responsibility to respect human rights in a manner that is consistent with the United Nations Guiding Principles on Business and Human Rights (the UN Guiding Principles). However, the absence of both an explicit reference to, and incorporation of the main elements of, the UN Guiding Principles renders this policy language ambiguous and will likely generate substantial confusion among clients and civil society. As currently worded, the EBRD’s proposed policy is inconsistent and at times contradictory with the UN Guiding Principles on Business and Human Rights. The UN Guiding Principles have been widely endorsed by governments and stakeholders across the world, including many of the EBRD’s member countries.</p> <p>To align the EBRD’s policy with the UN Guiding Principles, we recommend the following:</p> <ul style="list-style-type: none"> <li>• When referencing the responsibility of business to respect human rights, the EBRD should explicitly reference the UN Guiding Principles.</li> <li>• Equally important, the EBRD should clarify how the UN Guiding Principles have been operationalized throughout its new policy. Key elements of the UN Guiding Principles include: (1) a clear policy commitment by the client to respect human rights; (2) a human rights due diligence process; (3) tracking and reporting on clients’ performance on human rights risk mitigation plans; and (4) remediation in the event that human rights impacts occur.</li> <li>• There should also be a clearly defined relationship between human rights due diligence and the environmental and social risk management process. According to the UN Guiding Principles: “While processes for assessing human rights impacts can be incorporated within other processes such as risk assessments or environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.” Similarly, as the United Nations Independent Expert on</li> </ul>	

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			<p>Human Rights and Environment has observed, "[h]uman rights and the environment are not only interrelated, they are also interdependent." In other words, the link to human rights should be explicit. The EBRD should expressly integrate human rights considerations into its project appraisal.</p> <ul style="list-style-type: none"> <li>We further note that many traditional environmental and social impact assessments (ESIAs) do not systematically address the types of human rights risks that are most likely to arise in development projects. ESIAs often do not adequately assess the multiple dimensions of discrimination; the use of coercion and force during consultations; risks of violence, repression, or intimidation against civil society, journalists, or others who might critique the development project; or the likelihood that affected people will have access to effective remedies if human rights impacts occur.</li> <li>While the client will take the lead in conducting human rights due diligence on the ground, the EBRD has a responsibility to monitor this process in a robust way. The proposed language in the EBRD's new policy appears to rely almost entirely on a desk review of documents submitted by the client. This poses a serious conflict of interest for sensitive issues such as human rights or corruption. In some cases, this might mean that the EBRD is not receiving a frank assessment of human rights risks related to its investment.</li> </ul>	
90.	Policy		<p><b>Paragraph 9 should read as follows:</b> EBRD recognizes that the responsibility of business to respect human rights is an integral aspect of sustainable development. The responsibility of business to respect human rights involves avoiding infringement on the human rights of others, <i>the application of non--discriminatory policies according to article 21 of the Charter of Fundamental Rights of the European Union</i> and addressing adverse human rights impacts that their operations may cause or to which they may contribute as well as mitigating adverse human rights impacts that are directly linked to their operations.</p>	EBRD has adopted non-discriminatory requirements that are aligned with ILO fundamental principles and rights embedded in core ILO Conventions, we believe this addresses the issue sufficiently.
91.	Policy		Does the EBRD support projects that will eradicate "legal illiteracy" and promote capacity building in areas specific to Human Rights and legal literacy in COOs?	In the event that Project-affected people are unaware of their rights relating to issues such as i) compensation for loss of assets or employment, ii) Indigenous Peoples, iii) employment, EBRD will work with the client to enable them to understand their rights. This may be assisted by civil society and/or competent authorities.

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92.	Policy		<b>Footnote 6:</b> It may be helpful to add reference to the OECD Guidelines for Multinational Enterprises and UN Global Compact.	This has been considered and it was concluded that a reference to guidelines would be more fit for purpose for a guidance note to the policy than the policy document itself.
93.	Policy		footnote 7: a reference to the OECD Guidelines for Multinational Enterprises and the UN Global Compact would be useful.	
94.	Policy	Para 9 & 10	In B9 human rights is put in context of the responsibility of business and sustainable development; in B10 gender is in context of a “modern, well-functioning market economy and society”. A reader may wonder if the context/rationale for both these topics should not be more similar? Gender Equality can also be viewed as fundamental goal, regardless of the “modern market economy” aspect. Recommend to harmonise the rationale wording for both B9 human rights and B10 Gender.	The text is in recognition of EBRD’s specific mandate and the Bank’s Strategic Gender Initiative. The Policy recognises gender equality as a fundamental right specifically in PRs 1, 2, 5 , 7 and 10.
95.	Policy	Para 10: Gender	<p>The fact that the 71-page European Bank of Reconstruction and Development (EBRD) January 2014 draft Environmental and Social Policy (ESP) mentions gender about a half dozen times and women about a dozen times raises concerns about the Policy’s commitment to address gender disparities. While quantity might be less significant than quality, the draft ESP does not provide grounds for Gender Action to raise EBRD’s ranking as weakest among International Financial Institutions (IFIs) in addressing gender issues (Bibler 2013). The draft calls on clients to identify and enhance the positive gender impact of projects and reduce adverse gender impacts. But this general call is insufficient. The policy needs specific enforceable gender implementation guidelines.</p> <p>Of the draft’s ten specific Performance Requirements (PRs) containing objectives that projects are expected to meet, only three mention gender, usually in a phrase such as gender, disability, age etc. Only PR 7 on Indigenous Peoples commendably aims to mitigate potential harmful gender impacts. Gender is not mentioned substantively in the other PRs in terms of men’s and women’s gender roles, and how environmental issues would impact the lives of women.</p> <p>The PRs, which are essentially ESP’s policy pillars, provide an excellent opportunity to develop gender-sensitive strategies and requirements that can ensure both women and men benefit from and are not harmed by EBRD investments. As the draft ESP stands, the policy risks not achieving success because it does not explicitly detail how EBRD and its clients can prevent increasing women’s poverty and incurring other negative harmful gender impacts such as those triggered by past EBRD investments</p>	<p>The Environmental and Social Policy needs to be read together with the Bank’s Strategic Gender Initiative in which the Bank sets out what it will do to promote gender equality in terms of projects it finances, its policies and in policy dialogue. There is a commitment to develop tools for assessing gender impacts and to develop projects that promote access to finance, employment and skills and services. This can be found at <a href="http://www.ebrd.com/downloads/sector/gender/strategic-gender-initiative.pdf">http://www.ebrd.com/downloads/sector/gender/strategic-gender-initiative.pdf</a></p>

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96.	Policy		Draft text has a special section on gender equality, but not enough. It needs goals and measures so that it can be applied in practice and so women can be included in development planning and realise the benefits of development.	Please see above response.
97.	Policy		The draft ESP never explicitly discusses women's and men's equal rights. While the draft ESP acknowledges that some systems do not recognize the rights of women to own or contract property, it neither discusses compensation for women nor which international conventions can be used for national compliance with women's rights.	The ILO fundamental principles are referred to specifically in PR2 with respect to employment and wages. PR 5 discusses compensation for women (paras 19 – 20).
98.	Policy		How has gender been elaborated in the PRs?	There are specific references and requirements with respect to gender in PRs 1, 2 (non-discrimination, equal opportunities, equal remuneration), PR 5 (equal rights to participation , compensation), PR 7 (ensuring women in Indigenous Peoples' communities are involved in any decision making processes) and PR 10 (requiring women to be properly consulted).
99.	Policy		We acknowledge the strengthening of gender commitments in the PRs. We would like to see the requirements for gender and human rights impact assessments as part of the general ESIA requirements. What is the Bank's experience with these types of assessments?	
100.	Policy		<p><b>Gender In/equality</b> The draft ESP generally states that EBRD believes that gender equality is a fundamental aspect of a modern well-functioning market economy and society. Despite this general statement, the draft ESP's PRs and objectives rarely promote gender equality.</p> <p><b>Gender Data</b> The draft ESP evaluation does not require monitoring outcomes for women. It does not even require sex-disaggregated data to measure differential impacts on women, men, girls and boys.</p> <p><b>Gender in Context</b> The draft ESP generally mentions that conditions could adversely affect women but it does not discuss gender relations and roles.</p> <p><b>Gender Access</b> The draft ESP mentions that some national laws may not allow women to own property but does not discuss women's lack of access to other resources, assets and services.</p> <p><b>Gender and Care works</b> The draft ESP does not identify nor seek to value men's and women's differentiated unpaid care work, overwhelmingly borne by women.</p> <p><b>Gender Input</b> The draft ESP requires gender-sensitive consultations in projects affecting Indigenous Peoples. It needs to mandate gender-sensitive consultations in all projects.</p> <p><b>Gender Output</b> The draft ESP does not propose sex-disaggregated indicators to measure differential outputs on and ensure equal access for men and women, boys and girls.</p> <p><b>Gender Impact</b> The draft ESP generally considers adverse impacts on women but proposes no means to measures them.</p> <p><u>Recommendations</u></p>	<p>Please see responses above. In addition social is defined to include gender. The Bank believes that it has covered the recommendation related to consultation and impacts. Other issues are covered by the Bank's Strategic Gender Initiative. See comment 94.</p> <p>EBRD does not finance project activities that would involve unpaid care work.</p>

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			<p>The Policy should:</p> <ul style="list-style-type: none"> <li>✓ Define “social” to include gender roles and dynamics.</li> <li>✓ Promote women’s and men’s equal rights beyond property ownership.</li> <li>✓ Include gender objectives in each of its Performance Requirements (PRs).</li> <li>✓ Identify potential harmful impacts of all projects, especially those undermining women’s social and economic wellbeing.</li> <li>✓ Require inclusive consultation mechanisms that would ensure the active participation of women.</li> <li>✓ Provide a monitoring and evaluation framework including baseline and follow-up indicators to mitigate negative impacts on women, men, girls and boys.</li> <li>✓ Require EBRD projects to relieve and not expand women’s unpaid care burden.</li> </ul>	
101.	Policy		<p><b>Paragraph 10 should read as follows:</b> <i>EBRD commits to the principle of equality on the basis of gender, sexual orientation and gender identity (“SOGI”) as a fundamental aspect of a modern, well-functioning market economy and society. When financing a project, EBRD will expect its clients to identify and, where possible, enhance the positive impact of projects for those groups vulnerable on the basis of gender, sexual orientation and gender identity by undertaking to develop mitigating measures to reduce any potential and disproportionate impact specific to gender, sexual orientation or gender identity of an individual. EBRD will seek to promote equality of opportunity for all regardless of gender, sexual orientation and gender identity, and their socio-economic empowerment, particularly with respect to access to finance, services and employment of these groups. The EBRD will work in compliance with United Nations Resolution GA/34/180, “Convention on the Elimination of All Forms of Discrimination against Women”, and “The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity”. All social assessments, social impact studies and country strategies must pay special attention to gender, sexual orientation and gender identity.</i></p>	<p>The commitment to equality is contained in the EBRD’s references to the UN Declaration on Human Rights. Further details about legislation that can provide guidance on the matter will be included in guidance notes that will be developed as part of the implementation plan for the ESP.</p>
102.	Policy	Para 12	<p><b>Paragraph 12 should read as follows:</b> Through the implementation of this Policy EBRD will build partnerships with clients to assist them in adding value to their activities, improve long-term sustainability, compliance with international human rights standards and strengthen their environmental and social management capacity.</p>	<p>The recognition of human rights in paragraph 9 in the ESP is considered to cover the human rights aspects appropriately.</p>



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103.	Policy		By requiring in-depth EIAs and using best available practices and requiring adequate assessment the EBRD can contribute to raising capacity within a country. This should include communicating inferior assessment to governments and clients, and identifying gaps and needs.	This is EBRD's practice and we appreciate your views recognising the value of the Bank's approach.
104.	Policy	Para 13: Climate Change	[The use of the term] no/low carbon investments is confusing. Why not just use low carbon investments or clarify further.	No/low carbon is believed to be a universal term and appropriate in this context.
105.	Policy		EBRD should pro-actively prevent investments in coal/carbon intensive projects. EBRD has prepared a report on low-carbon transition – why is it not following that as a strategy?	Coal/carbon intensive project criteria has been strengthened in the EBRD Energy Sector Strategy
106.	Policy		ESP 2008 has more on climate change than the proposed draft. How can you claim you have “strengthened” EBRD's climate change commitments?	EBRD requirements relating to Greenhouse Gases (GHG) and climate change adaptation have been strengthened in ESP and PR3.
107.	Policy		Carbon/CC commitments are not strong (enough) in the ESP. they are stronger in e.g. the Energy Strategy. ESP should include clear carbon/CC impact criteria for projects, especially carbon shadow pricing should be applied to all projects, not just coal.	This is appropriately placed in the Energy Sector Strategy and there is no need to repeat them in the ESP.
108.	Policy		The SEI figures of 50 billion in CC mitigation with over 50 million tons of carbon emissions reduced is good, but this is not the whole story and a single lignite power project financed by EBRD changes the story remarkably.	Acknowledged. It should be noted that EBRD's investment portfolio has provided aggregate annual net carbon reductions since 2006.
109.	Policy		How is EBRD addressing CC adaptation? EBRD should take CC adaptation issues in consideration especially in SEMED where water resources are scarce.	EBRD is addressing climate change adaptation both in terms of considering the vulnerability and resilience of its projects to climate change risks as well as supporting its clients and countries of operation in identifying opportunities to address climate change adaptation challenges.
110.	Policy	Climate Change – Strategy and GHG reduction targets	ESP & climate change: The ESP is not the right place to address climate change but we compliment the Bank for addressing project level issues in the ESP and PR3. A Climate Policy should be drafted by the Bank.	Acknowledged. ESP is not the right document to include a climate strategy or GHG reduction targets, but we will consider these suggestions in the context of other EBRD strategies or initiatives.
111.	Policy		EBRD must develop an overarching Climate Change Strategy and should adopt a general CC target to limit climate change to 2 degrees in line with the UN IPCC.	
112.	Policy		Climate change: what is EBRD going to do to promote GHG reductions, are there targets?	
113.	Policy		Do you have GHG reduction targets – will you require all projects to reduce GHG emissions or be carbon neutral?	
114.	Policy	Para 14: Scope Ecosystem Services/ Green Economy	Is there anything in the ESP specific to promoting a Green Economy?	There is no specific reference in the ESP relating to the Bank's commitment to promoting Green Economy. EBRD has published a special report for the RIO+20 Earth Summit describing the ways in which EBRD has promoted and contributed to greening of economy through its investments over the past 20

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				years.
115.	Policy		Why has EBRD not included the Green Economy or Ecosystem Services in the policy—as other institutions all include this now.	<p>We have strengthened paragraph 9 of PR 6 to better reflect the ecosystems management approach. It is recognised that ecosystems and the ecological functions that ecosystems provide may be affected by the project activities and this may have an impact on affected communities and/or the project. The potential role local communities and/or indigenous peoples can play in the conservation and sustainable use of ecosystems and biodiversity resources is also recognised.</p> <p>Further to the above, PR6 clarifies that for projects that could potentially have such impacts on indigenous peoples and local communities, the client will provide for fair and equitable sharing of the benefits from the utilisation of living natural resources in accordance with: (i) the requirements for environmental and social management and assessment in PR1; (ii) the requirements for addressing economic displacement issues in PR5; (iii) the specific requirements relating to managing potential issues and impacts on Indigenous Peoples in PR7; and (iv) the stakeholder engagement requirements in PR 10.</p>
116.	Policy		[We are] keen to ensure that this policy does not contradict other international standards, as that would create confusion and/or an undue burden on companies in our industry and other sectors. The document does not mention ecosystem services and hence water (a key ecosystem service) is subsequently not considered. This emission deviates from other standards where the impact on and reliance on natural resources and ecosystems services are specifically mentioned.	
117.	Policy		<p>In 2011, the European Union published in its biodiversity strategy to 2020 (EU 2011) its intention to “ensure no net loss of biodiversity and ecosystem services” through assessment and mitigation of impacts of EU funded projects, plans and programs. However, EBRD’s Draft Environmental and Social Policy presently does not support the EU Biodiversity Strategy by not requiring its clients to address ecosystem services in their due diligence. An increasing number of resources exist to help address ecosystem services in environmental and social impact assessments. Practitioners who incorporated ecosystem services in their assessment report that they better understood how people interact with, benefit from, and value their environment; and consequently better anticipated socio-environmental problems that may occur over the life of the project. “Ecosystem services” are the benefits that people derive from ecosystems. They include, among others, freshwater, timber, erosion control, flood protection, climate regulation, recreation, aesthetic and cultural values, and primary production. By focusing on the nexus between environment and people, ecosystem services support a more holistic approach, thanks to which EBRD and its clients can better identify, assess, and manage the wellbeing implications of an investment’s environmental impacts (i.e. changes in basic material for a good life, mental and physical health, safety, culture). In addition, addressing ecosystem services also recognizes the contribution of ecosystems to the performance of the project for which the ESIA is conducted, helping EBRD and its clients identify, assess, and manage the environmental risks arising from ecosystem change.</p> <p>Understanding these impacts and dependencies should help EBRD improve the long-term performance of its investments, reduce negative social impacts, and facilitate engagement with affected stakeholders.</p> <p>I therefore recommend EBRD to explicitly incorporate ecosystem</p>	

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			<p>services throughout its Performance Requirements.</p> <p>Minor changes are needed to incorporate ecosystem services considerations in the other PRs. At a minimum, footnotes could be added in PRs 3, 4, 5, 7 and 8 to increase coherence among PRs regarding ecosystem services. Examples of such footnotes can be found in IFC Performance Standards (PS) in PS 4, paragraph 8; PS 5, paragraphs 5 and 25–29; PS 7, paragraphs 13–17 and 20; and PS 8, paragraph 11.</p>	
118.	Policy	Para 14: Precautionary Principle	<p>It is noted in paragraph 14 of the (draft revised) Environmental and Social Policy (as well as in paragraph 4 of Performance Requirement 6 and paragraph 1 of Performance Requirement 8) that the EBRD bases its project support determinations on the precautionary principle. It is important to recognize that the “across-the-board” application of this approach by the EBRD could preclude the support of some projects that could be undertaken with a high degree of environmental and social performance and could also result in tangible social development benefits accruing to project-area communities and/or host-countries. [We] support science-based risk assessment and risk-management processes to guide actions that are proportional to the nature of a project’s environmental and social setting and local economic conditions; we do not support prohibiting or postponing all actions to prevent degradation. We believe a science- and risk-based approach is consistent with the fundamental intent of the precautionary principle, and therefore it is our recommendation that the EBRD adopt this approach to underpin its project support decision-making processes.</p>	The comment is acknowledged. Paragraph 14 of the ESP relates to EBRD commitment to being precautionary in its approach to the protection and conservation of biodiversity. This commitment is translated in specific requirements in PR 6. One of the key principles guiding PR6 is that the objectives of biodiversity conservation and sustainable management of living natural resources must be balanced with the potential for utilising the multiple economic, social and cultural values of biodiversity and living natural resources in an optimised manner. It should also be noted that all projects that EBRD finances must follow a precautionary approach. . This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).
119.	Policy		Does Appendix 1 and Appendix 2 currently support this approach? I am not sure it does?	EBRD approach and specific requirements for biodiversity protection and conservation set out in PR6 it is thought sufficient to fulfilling this commitment.
120.	Policy		[We are] keen to ensure that this policy does not contradict other international standards. In this respect, we recommend reviewing the transparency element to ensure it does not create confusion and/or an undue burden for compliance.	Acknowledged. The appropriate wording relating to transparency has been reviewed.
121.	Policy	Para 15: Transparency & Stakeholder engagement	The publication of EIA ecological data of EBRD funded EIAs would be a valuable conservation resource. At a minimum this ecological data should be shared among the IFIs.	The Bank requires its clients to disclose full ESIA documentation to public for review and comment, and keep the ESIA documentation in the public domain throughout the life of the project.
122.	Policy		<p>References to the Espoo and the Aarhus Conventions should not be deleted.</p> <p>The Bank should disclose full information and not summary information about the Bank’s performance on environmental and social issues. There is a risk that a summary would not properly reflect the</p>	<p>References to Aarhus and Espoo conventions have been re-inserted in the ESP, paragraph 34, as follows:</p> <p><i>EBRD’s appraisal requires the clients to identify stakeholders potentially affected by and/or interested in the projects, disclose sufficient information about the impacts and issues arising from the projects and consult with</i></p>

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			facts and outcomes. A summary may accompany the full information, but should not replace it for the public. This is to follow from the Bank's commitment to transparency, accountability and good governance (see Bank's statement in the public information policy).	<i>stakeholders in a meaningful and culturally appropriate manner. In particular, EBRD requires the clients to engage with the project stakeholders in proportion to the potential impacts associated with the project and level of concern. Such stakeholder engagement should be carried out bearing in mind the spirit and principles of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. For projects subject to ESIA that have the potential to have significant environmental impacts across international boundaries, the Bank will encourage the approach of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context, regardless of geographical location of a project or its potential impacts. The Bank may, in some cases, conduct its own public consultation activities to gauge stakeholder views. Stakeholder identification and engagement may also be built into the Bank's technical cooperation activities, as appropriate.</i>
123.	Policy		<p><b>First sentence / deleted para. 8 and deleted footnotes 12 and 13:</b> We are deeply troubled by the proposed deletion of the explicit references to the Aarhus and Espoo Conventions which were previously contained in the now deleted para. 8 and deleted footnotes 12 and 13. The Aarhus and Espoo Conventions remain the only legally binding international instruments on stakeholder engagement and transboundary EIA respectively and are widely acknowledged to be international best practice. The deletion of the express references to Aarhus and Espoo in both the text and accompanying footnotes of this paragraph can only be construed as a significant regression by the Bank from its previous adherence to international best practice. Six years after its last policy review, the Bank should be re-affirming its commitment to carry out its operations in accordance with the principles of these two Conventions. Moreover, the deletion is noticeably out of step with the many other references to international and EU legal instruments throughout the ESP – including express references to non-binding instruments.<sup>5</sup> For example, the European Principles for the Environment.</p> <p><b>second sentence:</b> On our reading, the guarantee in the second sentence of proposed para. 15 is not in fact fully reflected in para 3.4 of the PIP which does not require the Bank to disclose environmental and social information on all projects. In keeping with articles 4 and 5 of the Aarhus Convention, it would preferable that it did so. The Bank's commitment to disclose information on its performance on environmental and social issues should disclose full available information, not just a summary, to both the Board and upon request members of the public. A summary may accompany the full information, but should not replace it as there is always a risk that a summary does not properly reflect the facts and outcomes.</p>	
124.	Policy		We are concerned that all references to the Espoo Convention have been removed from the Bank's obligations in the ESP. We tried to understand the reasoning from the document "summary of key changes" (of 20 January 2014), but ... that document is too short to provide a clear rationale for most changes. There are too many revisions in the draft of more than 100 pages, and a three-page summary of the key changes does not seem to clearly reflect all changes and their rationale. Therefore, it is not of much assistance to a	

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			reviewer.	
125.	Policy		<p>As stated on p.2 (proposed para. 3 of the ESP), “this Policy outlines how the Bank will address the environmental and social impacts of its projects by [...] mainstreaming environmental and social sustainability considerations into all its activities”. Moreover, on p. 3 (proposed para. 6), the Policy states that: “EBRD will seek within its mandate to ensure through its environmental and social appraisal and monitoring processes that projects are designed, implemented, and operated in compliance with applicable regulatory requirements and good international practice”. EIA (and SEA) are widely recognized practical tools that effectively promote sustainable development by mainstreaming the environment, including health considerations, into economic development and strategic and project-related decision making. Both EIA and SEA are enshrined in the international environmental law through the Espoo Convention and its Protocol on SEA.</p> <p>There are historical and legal arguments why explicit references to the Convention should remain. First, the Bank was established the same year as the adoption of the Espoo Convention, in 1991. The first policy of the Bank on environmental assessment was naturally founded on the principles enshrined in the Espoo Convention. This is why appendix 1 (now appendix 2) to the ESP closely follows appendix 1 to the Espoo Convention. We wonder whether the proposed change might be driven by countries’ possible opposition to the attempts of the Bank to apply the procedures under the Espoo Convention. Since the Espoo Convention remains globally the only legally binding instrument on environmental impact assessment, its deletion cannot easily be justified. Second, there is a clear expectation that an international organization that engages in operations is not simply inspired by, but explicitly commits to respect, international treaty law, in particular when its policies draw on treaty law. A majority of the countries where the Bank operates are Parties to the Espoo Convention (25 out of the 34 countries of operation are Parties), and Parties must be reminded of their obligations they are bound to. This should be a concrete line of action and not simply a recommendation.</p> <p>Besides, there is now clear evidence that the conduct of transboundary EIA is a requirement of international customary law. The main elements of EIA in customary international law closely track the main</p>	

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			<p>elements of the Espoo Convention, and a treaty is always more detailed than international custom. Taking this important development into account, the best practice for the Bank is to commit to and promote the Espoo Convention not only among Parties (reminding them of their treaty obligations), but also among other States in the region. This is notably relevant with the future opening of the Convention beyond the region with a number of countries from Northern Africa and Asia, where the Bank operates, have indicated interest in joining the Convention. Actually, the only reference to the Espoo Convention is under PR10, on p.109, fn.6, of the “Draft Revised ESP and PRs compared to 2008 Policy”, with respect to good international practice for stakeholders’ interaction. In our view the Convention reflects best international practice with respect to the content of the EIA documentation (see appendix II to the Convention) and the core stages of the EIA procedure, not limited to transboundary (establishment of an EIA procedure, notification, public participation, preparation of the EIA documentation and distribution for the purposes of public participation, final decision). And this should be pronounced in the ESP and the relevant PRs.</p> <p>In this regard, we consider that as an institution in which the majority of Member States are Parties to the Espoo Convention (45 out of 66 Member States are Parties), it would not be appropriate for the Bank to pass any efforts to meet the standards of this instrument off onto the Bank’s clients (see also below on the role of the developer/client). Rather, the Bank itself should in the ESP continue its past practice to clearly commit to the principles of the Espoo Convention, and in addition, in the PRs, require its clients to meet these standards. Over the years, Parties to the Convention have also recurrently advocated for further harmonization of the Banks’ practice with the provisions of the Convention, including through the systematic use of a checklist by the Bank (and other IFIs) on projects with transboundary impacts. Such an informal list was also prepared in 2008.</p> <p>We therefore recommend that specific references to the Espoo Convention in both the body of the ESP and PRs 1 and 10 are retained and that the Bank continues showing good international stewardship. It is important not only for IFIs to harmonize their policies and procedures vis-à-vis each other’s’ policies and procedures; but also to harmonize their policies and procedures vis-à-vis international treaty law. Synergies between the IFIs and the secretariats should be maximized. This is more so if references to European Union (EU)</p>	

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			<p>legislation are repeated in the proposed changes. It is acknowledged that the EU is a major player in the region and that EU, as a Party to the Convention, has transposed them and their standards may be stricter. However, references to internationally set standards should be retained, and they may be supported by illustration of the usually more detailed standards set by a Party to implement the Convention, such as the EU.</p> <p>The above arguments are also valid with regard to the proposed deletion of the references to the UNECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (Aarhus Convention). Similarly to the Espoo Convention, for over a decade, the ESP and the PRs (since their 2003 version) have explicitly mentioned the Aarhus Convention and thus provided an explicit reference for the client and country (bearing also in mind that 25 out of 34 countries of operation are Parties to the Aarhus Convention) of operation of the applicable international standards in procedural matters of direct relevance to the Bank's operations. We therefore suggest that similarly to the Espoo Convention, specific references to the Aarhus Convention in both the body of the ESP and the PRs 1 and 10 are retained.</p>	
126.	Policy		<p>The policy no longer mentions the Aarhus Convention: how will public opinion be taken into account in decision-making in countries which have ratified this Convention and what will be the case with communities whose views will not be taken into account in the decision-making process in countries which have not ratified it?</p>	
127.	Policy		<p>The Aarhus Convention is a document ensuring access to information, public participation and access to justice in countries where observance of democratic principles is not complete and where the rights of stakeholders are violated. For instance, in violation of the principles of the Aarhus Convention, the general public cannot appeal to the courts for protection of public interest. The courts will not accept such claims. This is an area where the EBRD can play an important role by not restricting the application of the Aarhus Convention to specific projects, but expanding it to all projects financed by it and in this way encouraging both government authorities and businesses to comply with the provisions of international treaties which impose specific obligations on the country and make it accountable to the international community.</p> <p>In non-EU countries, public participation is in reality reduced to imitation, and this is facilitated by the lack of procedures allowing</p>	

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			<p>public opinion to be taken into account. This also infringes both human rights and ownership rights and generates social tensions in project impact areas. Requiring the implementation of procedures which will take into account public opinion when projects are being discussed will allow most conflicts to be avoided: those between business entities and the community, between various groups within the same community and between government authorities and community organisations. It will also reduce the risk of corruption which arises when there are personal agreements with local administrations and with government officials, that is, where bribery replaces compliance with the law.</p> <p>Further, the EBRD defines communities affected by impacts as local communities. However, high risk projects cover much greater areas than those directly included in the project infrastructure. Bearing in mind that the EBRD's mission states that its main objective is to promote the country's development, the impact group should include the entire civil society.</p> <p>Turning now to the ESPOO Convention, we wish to note that the EIAs of the majority of projects financed by the EBRD do not include transboundary impact assessments. At the same time, due to geographical location, [some countries] impact the waters of neighbouring countries, since its surface waters flow into those countries. By including a transboundary impact assessment in its requirements, the EBRD will contribute to the mitigation of acute conflicts associated with the implementation of high-risk projects (category A and B projects), and will, among other benefits, prevent politically motivated manipulation of environmental categories.</p>	
128.	Policy		<p>We are deeply troubled by the unheralded removal of all references to the Aarhus Convention throughout the ESP and the Performance Requirements (PRs). The Aarhus Convention is binding law for more than two-thirds of the Bank's shareholder countries<sup>1</sup> (47 out of the Bank's 66 shareholder Countries are also Parties to the Aarhus Convention) and nearly three quarters of the Bank's countries of operation (25 out of the Bank's 34 countries of operations are also Parties to the Aarhus Convention). Moreover, article 3(7) of the Aarhus Convention requires Parties to the Convention to promote the application of the principles of the Convention the framework of international organizations in matters relating to the environment. International financial institutions such as the Bank have been</p>	



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			<p>explicitly recognized by the Parties to the Convention as falling within the scope of article 3(7) as well as within the scope of the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums adopted by Parties in 2005 to assist them with implementing this obligation.</p> <p>[As of] 1 March 2014, 47 governments had deposited their instruments of ratification. This means that the vast majority of both the Bank's shareholder countries and countries of operation have a binding legal obligation to promote the principles of the Aarhus Convention in the current review of the Bank's Environmental and Social Policy. However, contrary to this binding obligation, the current draft revision process proposes to entirely strip all references to the Aarhus Convention from the ESP.</p> <p>At the recent 17th session of the Working Group of the Parties to the Aarhus Convention, the Working Group took note of a statement [by... ] expressing its strong concern that the Bank's draft revised environmental and public information policies weakened the Bank's current requirements on information disclosure and public engagement. The Chair of the session encouraged Parties to promote the Convention's principles in the current policy review.</p> <p>The Aarhus Convention has been expressly cited in the ESP since the 2003 version. In the ensuing decade, the number of shareholder countries that are also Parties to the Aarhus Convention has almost doubled. That is to say, in 2014 twice as many shareholder countries are under an obligation to ensure that the principles of the Aarhus Convention are promoted in the revised ESP policy as at the time the references to the Convention were originally introduced. Moreover, even for the minority of shareholder countries and countries of operation not Parties to the Convention, the Aarhus Convention stands as international best practice. Thirteen years after it entered into force, it remains the only legally binding international instrument ensuring the public broad and concrete rights of participation in decision-making and access to information and justice regarding the environment stands as international best practice.</p> <p>Having carefully reviewed the draft ESP and the accompanying summary of key changes and summary of public consultation, we are entirely at a loss to understand why a blanket deletion of all references</p>	

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			<p>to the Aarhus Convention has been proposed. In particular, we note that the summary of the public consultation contains no call for these references to be deleted.</p> <p>The deletions of the references to the Aarhus Convention appear particularly notable given that the EPR and PRs continue to contain numerous references to other international and EU legal instruments, including a number of references to non-binding instruments. In fact, many new references to international legal instruments have been introduced during the current revision process.</p> <p>We believe that the Bank’s proposed deletion of all references to the Aarhus Convention can only be construed by clients, affected communities and other international financial institutions alike as a major regression from the Bank’s previous clear commitment to the implementation of the Aarhus Convention throughout its operations.</p> <p>Perhaps deleted paragraph 2 of PR10 illustrates this regression most succinctly: “On environmental matters in particular, the Bank supports the approach of the UNECE Aarhus Convention...”</p> <p>Given that the Aarhus Convention stands alone globally as international best practice on ensuring public engagement in environmental matters, coupled with the fact that the vast majority of shareholder countries and countries of operation are bound by its provisions, we strongly encourage the Bank not to withdraw its previous commitment to the Convention and to re-insert all references to the Aarhus Convention in the EPR and PRs.</p>	
129.	Policy		<p>[W]e also wish to express our strong concern at the deletion of all but one reference to the UNECE Convention on Environmental Impact Assessment in a Transboundary Context. The Espoo Convention is recognized as the leading instrument on environmental impact assessment in a transboundary context. As with the Aarhus Convention, two thirds of shareholder countries and three quarters of countries of operations are Parties to the Espoo Convention and thus have clear obligations to implement it. We therefore invite the Bank to re-insert the previous references to the Espoo Convention also.</p>	
130.	Policy		<p>The draft is weakening the commitment of the bank to apply the Espoo and Aarhus Convention. This means a significant weakening of the ESP and is not acceptable.</p>	

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131.	Policy		<p><b>Good International Practice (GIP) over International Law: Changes related to the Aarhus and Espoo Conventions in the EBRD ESP</b> The new ESP is committing the EBRD to Good International Practice (GIP), deleting previous commitments to International Law and subjecting its application to case by case discretion of the EBRD, again if and where appropriate. [We] are particularly concerned about changes being proposed to the EBRD Environmental and Social Policy that relate to the Aarhus and Espoo Conventions. The bank's own commitment and the requirements for its clients to be in line with principles of international law on access to environmental information and participation in decision-making on issues that may have negative transboundary impacts on the environment (including the UNECE Aarhus and Espoo Conventions) were clearly spelled out in the EBRD ESP 2008. These have had a very positive impact on the bank's operations in non-EU countries, especially those in which the aforementioned conventions are yet to be ratified or are not properly implemented. However, in the new EBRD ESP draft reference to these conventions has been moved from the Policy (previously paragraph 8) to the PR 10 on Information Disclosure and Stakeholder Engagement (footnote to paragraph 1). The bank's attempts to encourage clients to be more transparent and to consult with stakeholders are necessary, but hardly likely to be taken seriously when the bank fails to meaningfully do so itself. In this spirit, the new draft of the ESP states that the responsibility for impact assessment, preparation of management plans, public consultations, monitoring and implementation of mitigation measures is predominantly the responsibility of the client. This may appear useful in raising the capacity of clients to assess and deal with risks, however, this can only work in a combination with a clearly spelled out commitment on behalf of the EBRD to do more than simply "review" the information provided by the client, which is not the case in the current draft. There are a number of recent cases that demonstrate the dangers of this approach. ...In [some] cases consultants hired by the EBRD and co-financiers worked with information provided by the client and failed to identify the 'hidden' problems.</p> <p><b>Recommendation:</b> We find narrowing of the scope of Aarhus convention application as a step in the wrong direction – instead we would recommend the bank to strengthen its commitments to the implementation of the Conventions and its own requirements on information disclosure and public engagement, particularly on category B projects.</p>	

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132.	Policy		Apparently much of the previous text regarding stakeholder interaction (eg UNECE, EU-EIA, Transboundary, etc) has been deleted. Does the current abbreviated wording provide enough guidance and rigour to ensure adequate engagement and disclosure by Bank and clients? Consider implications of reduced text. Presumably NGOs will comment heavily on this topic.	
133.	Policy		The Bank's requirements to be in line with principles of international law on access to environmental information and participation in decision-making on issues that may have negative transboundary impacts to environment (such as Aarhus and Espoo Conventions) spelled out in the ESP 2008 was a good added value of the Bank's operations in non-EU countries, especially those in which the aforementioned conventions are yet to be ratified or not properly implemented. In the new ESP draft, reference to these conventions has been moved to PR10 and used in applications to projects classified by [the] Bank as potentially having "adverse negative impacts", thus backtracking on the requirement to apply Aarhus and Espoo Convention in other operations, including B category projects. A number of the Bank's projects classified as B in recent years have been associated with potential negative environmental and social impacts [...] including in the countries where public access to environmental information has proven to be problematic. Thus we find narrowing the scope of Aarhus and Espoo conventions application as a step in the wrong direction – instead we would expect the Bank to strengthen its requirement on information disclosure and public engagement on category B projects.	
134.	Policy		There is a perceived narrowing of EBRD's commitments to Espoo and Aarhus as they are now only referenced in PR10. Do these conventions only apply to category A projects?	
135.	Policy		Espoo and Aarhus conventions – what will EBRD do in countries that have not ratified Espoo in terms of assessing transboundary impacts?	
136.	Policy		The Espoo Convention on Environmental Impact Assessment in Transboundary Context: how will transboundary impact be taken into account if the relevant country has not ratified the Convention? This was in the previous policy.	
137.	Policy		Espoo convention – reflected in 2008, why has the reference been removed from the policy?	

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138.	Policy	Para 17: Country Strategies	<p>Yes this is an excellent point and I support this approach as it is an area that needs to be strengthened. In my experience past country strategies I have worked with have not had a comprehensive view of the E&amp;S challenges in country and sometimes do not seem to reflect all the learning the EBRD has gained from working in region to address the E&amp;S and sustainability challenges. This includes looking ahead as to what the E&amp;S priorities will be in the short, medium and long term for a particular country and how EBRD's strategy will consider these.</p> <p>See also my comments on annex 1 and 2 which I think need to reference country strategies in some way.</p> <p>I believe country strategies should also have an appreciation of the different level and type of E&amp;S risks and opportunities associated with different financial activities and services provided by the EBRD and FIs. This analysis may identify issues and activities which need to be a priority for the EBRD from a E&amp;S perspective and go over and above what is detailed in this E&amp;S policy and Annex 1 and Annex 2.</p>	<p>These constructive comments are acknowledged and will be considered further in preparation of Country Strategies.</p>
139.	Policy		Should include a second sentence along the lines "Country strategies and sector strategies/policies will be prepared and adopted following the provisions of the SEA Protocol".	
140.	Policy		We consider that the section on country and sector strategies (F on p. 14/deleted para.47) should remain and explicitly refer to the SEA Protocol. Part of it has been moved to paragraph 17, but we think it is better to keep the section clearly separate and include explicit references to the carrying out of the procedures according to the Protocol on SEA.	
141.	Policy	Para 18: Technical Cooperation & Policy Dialogue	The revised ESP also appears to have eliminated an EBRD role in capacity building of clients to implement and monitor their obligations under the ESP and PRs. We note that all references to capacity building by the EBRD have been removed in the ESP and would be interested to learn the reasoning behind this.	<p>The paragraph has been amended to expressly refer to EBRD's technical cooperation and policy dialogue. This kind of support may be targeted at national regional or local authorities.</p>
142.	Policy		We see that the capacity building/technical assistance element is here removed. In our view, it is critical that CB/TA is an activity spelled out in the policy and not part of a dialogue in general. This is more so if "the EBRD will work together with [...] UN agencies and other organizations in coordinating effective interventions to promote environmental and social sustainability at the regional or sectoral level in its countries or operations" (see para. 16 above, on the same p. 5).	

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143.	Policy		<b>deleted para 12:</b> We consider the Bank has an important role in building capacity and providing technical assistance in its countries of operation and we would like to see the now deleted references to capacity building/technical assistance that were contained in the 2008 policy re-introduced.	
144.	Policy		How will local authorities in remote regions benefit from the policies? They should become better with the implementation of the policy and you should commit to capacity building of local authorities.	
145.	Policy		The local authorities' capacity to implement environmental and social policy provisions are poor. You could strengthen the capacity building section in the policy.	
146.	Policy		For complex projects (category A), capacity building with local governments, PIUs and related agencies is required as local procedures are often lacking and/or not linked with the project development and/or EBRD financing and monitoring cycles.	
147.	Policy		<b>New provisions on technical cooperation and policy dialogue</b> The previous fuzzy formulation of policy dialogue has been clarified: <i>"Through its technical cooperation and policy dialogue, EBRD will seek to support development of an enabling environment for its clients to achieve environmentally and socially sustainable outcomes in their projects"</i> . In a country with a high corruption risk, this formulation will not work. What is more, the fuzziness of the EBRD's requirements in its relations with government authorities increases the risk of corruption also in the Bank's relationships with its clients, as has been found in the past in the mining industry. At the same time, public interest and the principles of sustainable development are ignored.	
148.	Policy		<b>New formulation on technical cooperation and policy dialogue</b> The previously vague formulation on policy dialogue has been clarified: <i>"Through its technical cooperation activities and policy dialogue, EBRD will seek to support development of an enabling environment for example by promoting its clients to achieve environmentally and socially sustainable outcomes in their projects."</i> Perhaps in practice this has been the approach all along, and the new draft just reiterates that. Nonetheless, this formulation is very problematic in suggesting that the EBRD will put the needs and interests of its clients above those of the country, the project-impacted communities and the environment in cases when these needs and interests are not fully compatible. Some of the EBRD's clients are large state-owned companies with strong political connections or transnational corporations with significant means to influence states' policies. Their projects already benefit from a number of exemptions	

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			<p>and favourable conditions, and these clients already have the 'upper hand' in promoting their interests in cases when they clash with environmental policy objectives, or with community and societal needs.</p> <p><b>Recommendation:</b> The ESP paragraph should be expanded to elaborate on safeguards needed for the environment and project-impacted communities, which may be in contradiction or in addition to the client's objectives, for example (addition in bold): <i>“Through its technical cooperation activities and policy dialogue, EBRD will seek to support development of an enabling environment for example by promoting its clients to achieve environmentally and socially sustainable outcomes in their projects, while at the same time seeking to safeguard through relevant policy measures the environment, the rights and development objectives of project-impacted communities.”</i></p>	
149.	Policy	Para 19: Internal Operations	How is this decided? When is it not appropriate to apply GIP [in EBRD internal practice]?	The qualification “whenever appropriate” has been deleted.
150.	Policy		Please delete “whenever appropriate”. To protect the Bank, para. 19 should make a clear commitment to always employ good international practice with regard to environmental and social sustainability.	
151.	Policy	Para 20: EBRD Role &responsibilities	The bulk of EBRD requirements are put on the clients' shoulders. But the Environmental and Social Policy (ESP) of the EBRD should include clear responsibilities for the Bank regarding proper implementation of its own policies.	We acknowledge this important comment and believe that the Bank's responsibilities and commitments are clearly described.
152.	Policy		Role and responsibilities of EBRD – should be clearer in terms of Bank complying with its own policy	
153.	Policy		<p><b>(iii) Page 4, Paragraph 21: EBRD's Role and Responsibilities:</b> The EBRD needs to make it explicit in its policy that compliance with its Performance Requirements is not voluntary but is obligatory for clients in order to receive and maintain financial support from EBRD. The IFC, in its revised 2012 version of its Policy on Environmental and Social Sustainability includes a paragraph to this effect on page 7, paragraph 22. EBRD's policy should include appropriately adapted language as follows. At the end of first sentence, ending in “...grounds”, the following phrase should be added: <i>“and failure of approved projects to meet the provisions of the Performance Requirements defined in this policy will lead to cessation of EDRD financial support.”</i></p>	ESP paragraph 44 describes the EBRD response in cases where the client fails to fulfil its obligations, including that the Bank may take such action and/or exercise the remedies contained in the financing agreements as appropriate.

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154.	Policy	Para 21: Project criteria Exclusions/no finance areas	<p><b>Explicitly reject / abstain from financing projects that are not compliant with this Policy</b></p> <p>It is important that the policy clearly states that the EBRD shall reject projects and stop funding of projects if they do not comply with Performance Requirements at any stage of their consideration and performance. This statement is crucial for potential clients to understand that this policy sets rules for environmental and social performance aimed at ‘promoting “environmentally sound and sustainable development” ‘, focusing not only on the EBRD itself but also on its clients.</p>	<p>The policy contains a number of statements and requirements to this effect. For example, ESP, paragraph 4: “<i>All projects financed by EBRD shall be structured to meet the requirements of this Policy.</i>” and paragraph 21: “<i>EBRD may refrain from financing a project on environmental or social grounds. In addition, there are several types of activities that EBRD does not finance in accordance with the EBRD Environmental and Social Exclusion List included, as Appendix 1 to this Policy.</i>”</p>
155.	Policy		The Bank shouldn't fund anything where there is a possibility that clients will not or cannot meet EBRD requirements.	
156.	Policy		The policy is getting better, but there is a disconnect between policy and the business side. No one can answer the critical question of how the ESP is reflected in project selection. You need to put it in practice.	
157.	Policy		We consider that the deleted examples that were contained in the 2008 policy provided useful guidance, and while clearly not an exhaustive list, we think they should be re-introduced.	
158.	Policy		Examples are useful to illustrate a situation, and we think they should be kept.	
159.	Policy		<p>The EBRD, in its special report “The Low Carbon Transition” in cooperation with the Grantham Research Institute, has emphasized the importance of keeping pace with the “green industrial revolution” in the long run, and that the transition towards a low-carbon economy moves in harmony with transition towards a market economy. [However, the Bank is making investments in] already extremely polluted and densely populated industrial zone[s] where its inhabitants suffer from air and water pollution. This project expansion is expected to raise the level of pollution further, not to mention the forced evictions, despite the Environment and Social Impact Assessment’s claim that modern equipment used in the implementation of the project will not cause pollution. In this respect, <b>we urge the Bank to include in its finalized ESP items that are clear over ceasing funding on projects that are associated with infringement to environmental and social rights as they adversely impact the wellbeing of people in areas of operation.</b></p>	



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160.	Policy		One of EBRD's purposes is "promoting investments with high environmental and social benefits, including working in partnership with others ( <a href="http://www.ebrd.com/downloads/research/policies/esp-draft.pdf">http://www.ebrd.com/downloads/research/policies/esp-draft.pdf</a> ; p.8)." <b>The Bank's approach towards this purpose includes</b> "promoting stand-alone investment projects in priority areas (Ibid; p. 8)." Yet, priority areas are not clearly identified by the Policy, and if such areas were to include investing in energy efficiency and renewable energy projects as stated in the previous ESP of 2008, then it is worthwhile noting that a number of experiences at the international level have shown that even investments in renewable energy can carry adverse impacts on the lives of citizens and local communities if planned and operated in the wrong place or on the wrong scale. In this regard, along with our satisfaction with investments bringing about environmental and social benefits, <b>the EBRD is requested to adopt sustainability criteria for the planned investments such that social and environmental rights of citizens and local communities are safeguarded.</b> This would allow the Bank to screen out harmful investment projects at an early stage.	The purpose of EBRD's ESP is to provide the framework by which all investments can be assessed against applicable EU substantive requirements and national law.
161.	Policy		Climate and vulnerability of arctic region – EBRD should reflect this in the policy (Arctic 20/20 programme).	EBRD recognises the sensitivity of the Arctic region. EBRD country and sector strategies as well as project specific assessments are better tailored to address this issue rather than the policy.
162.	Policy		EBRD promotes climate change adaptation, but will EBRD itself adapt to climate change? The arctic region is especially vulnerable – will you develop a policy for adjusting EBRD operations to climate change as it progresses.	
163.	Policy		EBRD should finance only projects with minimal risks and impacts.	EBRD was set out to promote transition in the region and do this through specific projects, technical cooperation and policy dialogue in its countries of operations. EBRD, its mandate and this policy specifically aim at avoiding or minimising impacts and risks associated with its projects and promote good international practice and the use of best available techniques to achieve that.
164.	Policy		[The Bank finances oil and gas projects,] a sector that easily attracts investment, while at the same time the Bank has always underlined its prioritizing of renewable energy in its countries of operation. Among others, such practices have placed the EBRD behind other major international financial institutions in terms of moving away from supporting the most polluting projects, particularly in the energy sector*. This essentially reflects the presence of gaps in the ESP set by the Bank, and hence necessitates bridging these gaps. * <a href="http://www.counterbalance-eib.org/?p=2668">http://www.counterbalance-eib.org/?p=2668</a>	
165.	Policy		It is risky for EBRD to fund sectors where there isn't clear government policy to regulate and/or manage these sectors. For example, there is a huge gap between government requirements in [our country] for HPPs and that of local NGOs and the public in general. In these cases, EBRD	EBRD undertakes its own environmental and social appraisal of each project and requires its clients to structure the projects to meet EBRD requirements/PRs.

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			should not finance these projects.	
166.	Policy		Is there a condition in the ESP that allows EBRD to go against local policies / local decisions (e.g. local decisions that allow controversial projects to go forward). For example, if the Government approves a controversial HPP project, without carrying out an adequate ESIA, would EBRD finance it?	
167.	Policy		Coal projects in our region impact health and water scarcity. The policy does not make reference to regional issues. The Bank has to look critically at all coal projects during project identification.	EBRD Energy Sector Strategy approved in 2013 sets out specific criteria for EBRD financing of coal projects. All projects are required to be structured to meet EBRD PRs.
168.	Policy		[Given the region's dependence on lignite] With these opportunities, comes a great deal of opposition and potential for environmental degradation. For example, there is currently proposed a 2100 MW TPP that is located only 3.5 km from a major town centre. Despite the potential E&S issues, once you have a political will, with huge support from the WB and EU, there is nothing you can do. ESIA's are flawed; no SEAs.	
169.	Policy		There is significant damage caused by over-use of resources. The issues relating to compensation rates and tariffs do not take into account the externalities and true cost to the local people.	EBRD requires that projects are designed, implemented, and operated in compliance with applicable regulatory requirements and good international practice. This approach is consistent with other IFIs.
170.	Policy		The ESP encourages/promotes the development of renewable energies; however, many industries compete with this strategy (e.g. they are not sustainable). Does EBRD have "No Go" sectors?	Appendix 1 to the ESP contains list of excluded activities. All projects undergo environmental and social appraisal to help EBRD decide if the project should be financed.
171.	Policy		You need publicly available renewables criteria.	Environmental and social policy does not address sector-specific issues. All projects are required to be structured to meet EBRD PRs. Energy Sector Strategy sets out criteria for renewable energy projects.
172.	Policy	Paras 23-26: Categorisation	Surely these effects and lack of effective mitigation will only be apparent once a formalised and participatory ESIA has been undertaken - surely this category should relate instead to risk to specific critical assets?  [Similarly for Category B], unclear how these can be identified before full ESIA has been undertaken, again surely this category should relate instead to projects likely to impact on important, but non-critical environmental/social assets.	Paragraphs 23-26 have been revised and amended to clarify the way in which EBRD categorises projects. Criteria for category A projects does not relate to whether or not mitigation measures can readily be identified..
173.	Policy		It is not clear how EBRD categorize projects. The process has to be disclosed to the public.	In addition to the policy, the Bank has disclosed its Environmental and Social Procedures on its website, which give further detail on categorisation. The Environmental and Social Procedures will be amended and updated after approval of the new policy by the Board of Directors of EBRD.

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174.	Policy		How can projects be categorised as B if they have significant negative impacts?	<p>Paragraphs 23-26 have been revised and amended to clarify that categorisation relates only to the nature and significance of potential adverse future impacts that the project is likely to cause. Past and present environmental and social issues and risks associated with project-related existing facilities will be subject to environmental and social appraisal regardless of the categorisation.</p> <p>Category C project definition has been clarified as follows: “A <i>project is categorised C when it is likely to have minimal or no potential adverse future environmental and/or social impacts, which can readily be addressed through limited environmental and social appraisal.</i>”</p> <p>Projects categorised A require an ESIA process, including public disclosure and consultation. The ESIA documentation that is disclosed addresses all potential impacts that the project could have.</p> <p>It is recognised that some national environmental impact assessment laws are based on impacts at local or regional level. EBRD categorisation criteria do not refer to this and categorisation is based on the nature and significance of the potential adverse future impacts.</p>
175.	Policy		It is still not clear why large complex projects involving existing facilities are not put in Category A, when they sometimes result in negative impacts to local communities, and people need to be consulted. We see mining projects, oil projects that are category B, but they bring new infrastructure that has its own impacts, like a new oil waste pit near someone’s house—it may be category B, but the local people have new negative impacts because of the project and haven’t been consulted. More As would allow more public input on things that affect them.	
176.	Policy		<b>Categorisation</b> – what is category if the project is associated with an existing activity that is damaging/harmful? Projects with direct or indirect connection to another activity that is harmful should be categorised A.	
177.	Policy		Category C – what are the “dimensions” of category C projects and what has changed since the 2008 ESP? Are category C projects (and related impacts) consistent with the operations of small clients/small business?	
178.	Policy		<p>We should also like to note that the EBRD categorises projects not only in terms of the accepted risk categories of A, B and C, but also in terms of special categories such as environmental protection, transport and energy. At the same time, a project may include several such categories.</p> <p>If all categories included in a single project were to be identified, this would facilitate access to information and project monitoring and would coincide with public interest.</p>	
179.	Policy		<p><b>The project life cycle. Categorisation</b></p> <p>24. It should be explicitly stated that a project is categorised A when it could result in potentially significant adverse future environmental and social impacts at the regional level.</p> <p>25. It should be explicitly stated that a project is categorised B when it could result in potentially significant adverse future environmental and social impacts at the local level.</p> <p>26. It should be explicitly stated that a project is categorised C when it is likely that the potential environmental and social impacts are insignificant at the level of the project area.</p>	

	Ref.	Issue	Comment	Management Response
180.	Policy		ESP 24-26 on categorisation: it should be clarified what type of projects or companies/enterprises these categories entail – it appears that category A are “national/federal”, category B “regional“ projects and category C “local” projects. Could the definitions be changed accordingly?	The public can challenge the categorisation through EBRD’s grievance and accountability mechanisms.
181.	Policy		Given the significant ramifications for stakeholder engagement and the assessment of the environmental and social impacts of the Bank’s determination on whether a particular project should be categorized as Category A, B or C, we consider that the public should be able to challenge that determination. As an indication of international best practice, the Aarhus Convention Compliance Committee has held that screening decisions should be subject to access to justice under article 9(2) of the Convention. <sup>6</sup> As this determination is made by the Bank, we consider that the ESP would be the most appropriate place to include a provision entitling affected communities and other stakeholders to challenge the determination.	
182.	Policy		Through the present review exercise, it is important for the Bank to consider how to provide for opportunities to members of the public to challenge a determination that a project is category A, B or C. Either through the PR1 or through the project compliance mechanism, as deemed appropriate.	
183.	Policy	Para 28: FIs	<p>This paragraph on FIs requires more detail to provide meaningful evaluation, monitoring, and enforcement of elements in the ESP. In addition to the initial due diligence, EBRD should at least do an annual review of the FI overall, not just the projects, to ensure it still meets the relevant standards. Further, the “case by case” nature of the due diligence, without more specific baseline standards, is too flexible and may allow for significant shortcomings from the ESP that would fall short of shareholder and stakeholder expectations. Therefore, we suggest the following changes:</p> <p>A project will be classified as “FI” if the financing structure involves the provision of funds through financial intermediaries (“FI”) whereby the FI undertakes the task of sub-project appraisal and monitoring. Prior to establishing relationships with an FI, the EBRD conducts due diligence on the FI and its portfolio to assess: (i) the FI’s existing environmental and social policies and procedures and its capacity to implement them, and; (ii) environmental and social issues associated with the FI’s existing and likely future portfolio.</p> <p>The specific requirements pertaining to FIs will be determined by the Bank on a case by case basis, in terms of <b>using as its baseline reference level the Performance Requirements in the ESP. The</b></p>	This is an accurate summary of EBRD’s approach to the appraisal and monitoring of FIs as described in ESP and PR9. It should be noted that FIs are subject to EBRD monitoring as described in paragraphs 43-44 in the ESP. EBRD monitoring covers the FIs overall performance, compliance with PRs 2 and 9 and management of its portfolio in a manner that is proportionate to the nature of the FI.

	Ref.	Issue	Comment	Management Response
			<p><b>framework includes, at least:</b> (i) the scope of application within the FI's portfolio; (ii) the nature of standards required by sub-projects; (iii) the FI's environmental and social due diligence system; (iv) FI disclosure and reporting requirements; and, (v) the nature of EBRD's monitoring activities.</p> <p><b>Further, EBRD shall, at least annually, review the FI for its adherence to and improvement over the initial standards reported in the due diligence review. This review shall be in addition to annual review of specific projects (see PR 9). In the case of noncompliance by the FI, the EBRD may introduce remedial steps into the FI's Environmental and Social Risk Management System or take other steps as it deems appropriate.</b></p> <p><b>EBRD will include an annual report on FI due diligence and significant cases of non-compliance, to be available by request and on the EBRD website.</b></p>	
184.	Policy	Paras 29-34: Appraisal Process	How is the bank conducting ESIA's – by the Bank staff or is it outsourced?	It is the responsibility of the Bank's clients to carry out the ESIA's. EBRD staff does not conduct ESIA studies. We review and may complement them to ensure that they are adequate for public disclosure and compliant with the PRs.
185.	Policy		How does EBRD take into consideration client's other operations, e.g. industrial level agriculture farming, when EBRD finances only small / selected parts, e.g. renewable energy or energy efficiency.	EBRD project appraisal considers the facilities and activities that are associated with the project, but are not financed by EBRD. Past and present environmental and social issues and risks associated with project-related existing facilities will be subject to environmental and social appraisal. These associated activities or facilities may either be under the control of the client or carried out by, or belong to, third parties. EBRD will encourage its clients to manage environmental and social risks consistent with the PRs in their other operations that are associated with but not part of the project.
186.	Policy		EBRD finances big projects with big companies, who may have other projects and activities than those financed by the Bank that are poorly managed and may have high environmental and social impacts. How does the Bank take this into account?	
187.	Policy		Many CSOs have concerns over the potential for Bank financed projects to impact the environment and the natural resources that they support (e.g. water and vegetation). The ESP fails to adequately protect these important resources. Specifically, the appraisal process, as presented in the ESP, is not strict enough to address gaps at the local regulatory level (e.g. requirement for independent assessments/evaluations). How does EBRD address these gaps?	
188.	Policy		Investment development cycle is not the same as reasoning (justification) of an investment – this should be recognised by EBRD and require the logic of reasoning, i.e. at what stage the Bank can approve a project – this should be made clear and transparent.	All projects undergo environmental and social appraisal to help EBRD decide whether or not to provide financing for projects. This can take place at various stages of the project development cycle. The appraisal needs to be completed before EBRD can approve a project. Additional studies may be required to be carried out after EBRD Board of Directors approves a project.
189.	Policy		There is no verification of the clients' information by the Bank and we have examples where clients have not given accurate information. It appears that the Bank has gone backwards.	EBRD clients are required to provide legal representations and warranties on information provided to EBRD during the appraisal of a project. Depending on the potential risks and impacts of a project, EBRD may use independent experts

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				to verify and check the information provided by the client.
190.	Policy	Appraisal: SEAs	It is existing good practice by the Bank to carry out Strategic Environmental Reviews (SER) for the sectoral policies, which to a large extent follow the standards under the SEA. We consider that the Bank can show best practice by continuing this trend in future operations and by specifically referring to the Protocol on SEA for the preparation of its country and sector strategies. Evaluation of the likely environmental, including health, effects, at the stage of country/sectoral policies will further guide specific projects that follow. For example, proposed para. 17 could include a second sentence along the lines “Country strategies and sector strategies/policies will be prepared and adopted following the provisions of the SEA Protocol”; and Section F on p. 14 – deleted para. 47, should be retained and with an explicit reference to the Protocol. It should be noted that a number of countries where the Bank operates have an aspiration to become Parties to the Protocol on SEA. In that regard, the secretariat is offering technical assistance, including recently through the EU funded “EaP Green programme: Greening economies in the European Union’s Eastern Partnership countries”. Based on reviews, legislative, institutional and process changes are proposed to further strengthen the countries’ capacity to implement and fulfill the obligations under the Protocol.	SEA is an important tool for decision-makers in assessing policies, plans and programmes. EBRD is happy to support decision-makers in our Countries of Operation. We have also used it to look at grant programmes managed by the Bank.
191.	Policy		[Our country] has taken an aggressive approach to developing HPPs, without carrying out SEAs. This is a concern for national NGOs and is often a source of conflict for local communities.	
192.	Policy		Strategic environmental assessments are useful tools. Why is this not included/required in the current Policy?	
193.	Policy	Appraisal: Location	Do you take into account the geographic location of countries, particularly ones that might be more isolated?	Yes, we look at projects in context of their geographic location.
194.	Policy		How will the EBRD take into account the “Green Morocco Plan” in its ESP as well as taking into account the conservation of important/fragile ecosystems?	This type of national plans are reviewed and reflected in the preparation of EBRD Country Strategies. They are also reviewed and considered in project specific appraisal process to ensure EBRD projects do not contradict and where possible, contribute to the implementation of such plans.
195.	Policy	Appraisal: Transboundary impacts	The Bank often finances large-scale projects that have potential long-range transboundary environmental impacts. This aspect should be reflected in the revised ESP and PR1, so that there is a clear obligation for the client and the authorities, under the jurisdiction where the Bank operates, to carry out the transboundary procedures under the [Espoo]	Paragraph 10 in PR1 has been amended to clarify that an ESIA carried out by the client is to consider potential transboundary impacts.

	Ref.	Issue	Comment	Management Response
			Convention. This can be done by explicit references to the likely significant adverse transboundary environmental impact and its evaluation as part of the Bank's policy in the ESP (e.g. into para. 30 on the overall approach to project appraisal; or in paras. 39 and 40, as part of the documentation/information to be submitted to inform the decision-making by the Bank's Board of Directors). Moreover, PR1 should include among its objectives (proposed para. 3 or preferably by a new paragraphs specifically referring to transboundary obligations) that transboundary procedures (notification, EIA, consultations) should be followed, in case of potential significant adverse environmental impacts and this should be reflected further in the PR (obligation of the public sector client/public authorities and obligation for the private client to cooperate with the public authorities). ( According to the General guidance on enhancing consistency between the Convention and environmental assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia, to be adopted by the MOP at its next session in June 2014, there are certain steps in the transboundary procedure that can be undertaken by the public authority only and may not be entrusted to the developer/project proponent.) This is appropriate, since Parties to the Convention are bound to the obligations they committed to; and the procedures set out of the Convention are now accepted as best international practice and customary law. Ensuring transboundary EIA procedures under the Convention enhances international cooperation and good neighborly relations.	
196.	Policy		On the overall approach to project appraisal, consider including reference to the likely significant adverse transboundary environmental impact and its evaluation as part of the Bank's policy in the ESP.	
197.	Policy	Para 30	This is a very loose definition of a projects "area of influence" and a projects area of influence and indirect impacts must be considered as part of any environmental and social appraisal.	The language in paragraph 9 of PR1 has been amended to specifically refer to direct and indirect impacts.
198.	Policy	Para 33: Requirements for projects already approved and GAP analysis	ESIAs are often carried out after the political decision about a certain project has been made. In these cases, how are EBRD's requirements applied?	EBRD requires an ESIA process to be undertaken in accordance with its own requirements to structure the project to meet EBRD PRs and support its decision making as to whether or not to provide financing for the project. Sometimes the EBRD ESIA may be carried out after the local permitting process has been completed. EBRD appraisal will include a review of the existing studies and a gap analysis of the project design and documentation against the PRs to identify the scope
199.	Policy		Due diligence – project documentation reviewed by authorities before approval – then the review process has to be repeated for EBRD to access finance – three could be duplicate or three-fold amount of work to clients	

	Ref.	Issue	Comment	Management Response
200.	Policy		Does the Bank have procedures or guidance for preparing a gap analysis between EBRD requirements and national requirements?	for any additional studies and/or mitigation measures are required to meet EBRD's requirements.
201.	Policy	Para 34: Stakeholder engagement	Public consultation and decision making procedures are unclear – we could propose project appraisal procedures and how public consultation should be taken into consideration in the decision making.	EBRD requires its clients to carry out public consultation as part of the ESIA process for category A projects. These requirements are described in paragraphs 19-22 in PR10.
202.	Policy		Public consultation – how can it be improved?	
203.	Policy		Important that EBRD organises consultation meetings! They are very helpful.	Acknowledged. EBRD may organise its own public consultation meetings in addition to its clients' stakeholder engagement process. The scope of such meetings and the way in which they are organised is a case-by-case decision.
204.	Policy		While we welcome the Bank's commitment to conduct its own public consultation activities, in some cases, to gauge stakeholder views, we would like to see wording added to make clear that the Bank will carry out such activities in accordance with PR10.	
205.	Policy		While paragraph 34 does impose some additional measures for clients, EBRD oversight should be clearer, as well as the inclusion of a third party to ensure compliance. Otherwise the project runs the risk of not meeting ESP standards or not doing so in a meaningfully timely manner. We therefore propose the following change: EBRD's appraisal requires the clients to identify stakeholders potentially affected by and/or interested, <b>including international ones</b> , in the projects, disclose sufficient information about the impacts and issues arising from the projects and consult with stakeholders in a meaningful, <b>timely</b> and culturally appropriate manner. The Bank <b>will hire a third party to review this process to ensure it complies with the ESP before consultation proceeds, and the Bank</b> may, in some cases, conduct its own public consultation activities to gauge stakeholder views. Stakeholder identification and engagement may also be built into the Bank's technical cooperation activities, as appropriate <b>and advised by the third party reviewer</b> . We additionally suggest that the idea of timely review by EBRD be incorporated and defined throughout the ESP where relevant. This could be as simple as a footnote following the first use of "timely," as in this edit of Section C, paragraph 34, and defining it as we have here: <b>"Timely" means in a time frame such that the project is able to meet the PRs, including implementation of proper remedial improvements where necessary.</b>	EBRD requires its clients to carry out public consultation as part of the ESIA process for category A projects. PR1 paragraph 10 stipulates that the ESIA may need to be carried out or verified by independent experts.
206.	Policy		River navigation/shipping programme was developed in Belarus, the Government didn't understand that modification of rivers would have transboundary impacts on neighbouring countries. It's important to involve NGOS and experts to identify and assess impacts.	EBRD requires its clients to identify relevant stakeholders as part of the project's stakeholder engagement planning as described in PR10.



	Ref.	Issue	Comment	Management Response
207.	Policy	Para 35: Performance Requirements Para 36	Given that this is the main section of the ESP dealing with the PRs, in addition to the reference in paras. 5 and para. 42, we would like to see a clear statement in para. 35 that “all projects are required to meet the 10 PRs”. At the moment, this seems a rather striking omission.	The policy contains a number of statements and requirements to this effect. For example, ESP, paragraph 4: “ <i>All projects financed by EBRD shall be structured to meet the requirements of this Policy.</i> ” and paragraph 5. “ <i>EBRD has adopted a comprehensive set of specific Performance Requirements (“PRs”) that the projects are expected to meet.</i> ”
208.	Policy		It is important to reiterate that all projects are required to meet the 10 PRs	
209.	Policy		Why is deleted para. 29 in 2008 ESP removed? It is our view that clients should be required to structure project so that they meet all applicable PRs (unless this requirement has now been moved somewhere else in the proposed text, but we were not able to track it).	
210.	Policy		Ensuring a timeline for PR and ESP compliance in cases where these standards are not met at the outset is extremely important for the ESP to be effective, particularly, for example, in the case of animal welfare and animal housing conditions. Paragraph 36, as written, is not clear enough on what the EBRD would allow as an acceptable mitigation plan. Therefore, we propose the following change mainly to ensure that, at the very least, the timeline is not extended to the point at which the PR and ESP requirements are rendered meaningless—and certainly not passed the life of the loan: Projects involving new facilities or business activities will be designed to meet the PRs from the outset. If a project involves existing facilities or activities that do not meet the PRs at the time of Board approval, the client will be required, whenever appropriate, to adopt measures satisfactory to EBRD, that are technically and financially feasible and cost-effective to achieve compliance of these facilities or activities with the PRs within a time frame acceptable to EBRD, <b>such that these measures are effective to meet or exceed the PRs and ESP no later than by the conclusion of the finance agreement.</b> In addition, EBRD will encourage its clients to manage environmental and social risks consistent with the PRs in their other operations that are associated with but not part of the project.	The “reasonable period of time” is a commonly used legal concept, for example in EU Directives. It is agreed on case-by-case basis between EBRD and the client and always has to be acceptable to EBRD. We acknowledged the need for early application of the mitigation hierarchy to be effective. EBRD only has leverage over its clients up until conclusion of the financing agreement, and this is taken into consideration in agreeing the time period for the project mitigation and implementation requirements.
211.	Policy	Para 39	The full comments from the public, together with the client’s response to each of those comments should be part of the documentation provided to the Board and not just a summary. A summary may accompany the documentation but should not substitute the full document. This is consistent with good international practice as shown by the findings of the Aarhus Convention Compliance Committee.	The information submitted to EBRD’s Board of Directors is normally a summary. Full information, including public comments received during the public consultation undertaken as part of an ESIA process for category A projects is made publicly available by the client.

	Ref.	Issue	Comment	Management Response
212.	Policy		the full stakeholder engagement should be part of the documentation to the Board and not just a summary (see proposed on p. 10). A summary may accompany the documentation but not substitute the full document	
213.	Policy		In proposed, similarly consider including explicit references to the likely significant adverse transboundary environmental impact and its evaluation as part of the Bank's policy in the ESP. as part of the documentation/information to be submitted to inform the decision-making by the Bank's Board of Directors	The information submitted to EBRD's Board of Directors includes a description of the substantive environmental and social impacts and issues, including any transboundary impacts.
214.	Policy		The current phrasing is confusing. We suggest a comma after "substantive impacts and issues."	Acknowledged, a comma has been added.
215.	Policy	Para 40: Deferred Appraisal	CSOs have concerns over the inclusion of paragraph in the ESP which is lowering the quality of EIA.	The paragraph has been substantially revised, taking into consideration the comments received.
216.	Policy		The current phrasing is confusing. We suggest adding the word "on" so that the first sentence reads "...to agree <b>on</b> a deferred level..."	
217.	Policy		We are concerned about the introduction of <b>deferral of appraisal</b> after Board approval. The Bank should complete appraisal before Board.	
218.	Policy		The new draft policy creates the possibility for environmental and social project appraisals to be carried out after Board approval of projects and signing of financial agreements. This is too late in the process – it would exclude public participation at the decision-making stage and effectively sends a signal to clients that they can treat these appraisals as a formality.	
219.	Policy		[We are] concerned about the introduction of the new deferral loophole (para 40 in the new draft) which means that the EBRD board can provisionally approve a project conditioned on the later completion of additional research or planning. Two of the recently concluded PCM investigations [...] are clear examples where the projects were approved and signed and only then additional nature studies were undertaken. While some provisions have to be made for minor issues to still be clarified after Board approval, issues which are serious enough to potentially prevent projects from going ahead must be fully addressed before Board approval. An up-date of the Project Summary Documents after Board approval will not enable public participation	

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			and moreover Board approval sends a strong political signal that a project can go ahead and encourages clients to treat further studies as a mere formality.	
220.	Policy		We have concerns over the inclusion of paragraph 40 (Deferral of appraisal) in the ESP.	
221.	Policy		What's the point of approving something first and only then undertaking assessment of risks and impacts? This is making the whole policy meaningless. How is public able to be consulted on and participate in the decision making when approval has already been given?	
222.	Policy		<b>Deferred level of project appraisal: following Board approval (ESP)</b> [We] wishes to join [others] in their concern about a new policy loophole (Paragraph 40 of the Draft ESP), which allows the EBRD's Board of Directors to grant temporary approval to projects, subject to subsequent completion of further investigations and plans. The updated Project Summary Document does not envisage public participation after its approval by the EBRD's Board of Directors. In addition, the Board's approval sends a strong political signal in favour of project implementation, allowing clients to treat any subsequent investigation as a formality.	
223.	Policy		<b>Deferral for studies after board approval (ESP)</b> [We] are concerned about the introduction of the new deferral option, as well as the "alternative approach" in Decision-making (paragraphs 40 and 41 in the new draft). Two of the recently concluded PCM investigations ... are clear examples where the projects were approved and signed and only then additional nature studies were undertaken, with an additional and in our opinion unnecessary time and monetary cost from the side of the bank and the project sponsor. While some provisions have to be made for minor issues to still be clarified after board approval, issues which are serious enough to potentially prevent projects from going ahead must be fully addressed before board approval. An up-date of the Project Summary Documents after board approval will not enable public participation, and moreover board approval sends a strong political signal that a project can go ahead and encourages clients to treat further studies as a mere formality. Regarding 'alternative approaches', otherwise known as derogations, the purpose of having a policy is to implement it, not to create wide loopholes which allow the bank to bypass it. <b>Recommendation:</b> For paragraph 40 of the Environmental and Social	

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			<p>Policy section on the EBRD's commitments, amend text as follows (additions in bold): <b>The EBRD's Board of Directors</b> has the discretion to agree a deferred level of project appraisal following Board approval and after the signing of the financing agreements in specific circumstances <b>where the remaining issues are minor and do not have the potential to prevent the whole project from going ahead.</b></p> <p>This approval will require completion of further environmental and social appraisal in compliance with this Policy and the PRs prior to disbursement or within an agreed implementation schedule (e.g., prior to acquisition of future assets). In cases where deferred appraisal has been agreed, the Project Summary Document will include a description of the approach agreed. For Paragraph 41, delete the paragraph.</p>	
224.	Policy	Para 41: Alternative Approaches	The following paragraph (41) also contains a worrying provision. It envisages alternative approaches to decision-making, which in essence allow any project to depart from the policy, if approved by the Board. This provision undermines the rationale of the entire policy.	This paragraph has now been removed from the policy.
225.	Policy		Paragraph 41 (alternative approach/derogation) seems to undermine the entire ESP.	
226.	Policy		Paragraph 41 (alternative approaches) should identify that these alternative approaches are only approved under "exceptional cases". Also additional information concerning how these alternatives approaches are approved by the Board should be provided.	
227.	Policy		In [...] paragraph (41) there is also a worrying clause allowing an "alternative approach" in decision-making, which basically allows any project to be derogated from the policy if the Board of Directors agrees. This rather undermines the point of the whole policy.	
228.	Policy		The alternative approaches should be further defined or at least the ESP should include some situational criteria. Otherwise, the use of the alternative approaches risks to become random...	
229.	Policy		We consider that this provision is currently too vague in several respects. First, it is not clear what "alternative approaches" might be used. Second, it is not clear what circumstances would be considered sufficient to merit their use. We recommend the inclusion of an additional sentence "In all cases, the Bank will seek to ensure that any deviation from the ESP will be kept to the minimum possible". In accordance with good international practice, we would also recommend that any determination to apply alternative approaches, being of the nature of a screening decision, should be subject to possible review under the Project Complaints Mechanism.	

	Ref.	Issue	Comment	Management Response
230.	Policy	Independent verification	It is not clear to what extent EBRD requires independent verification of client's information and assessments. EBRD should always do this and not rely on information provided by the client. This is equally important regarding assessments and monitoring reports. This text should be strengthened in the ESP and PR1	EBRD clients are required to provide legal representations and warranties on information provided to EBRD during the appraisal of a project. Depending on the potential risks and impacts of a project, EBRD may use independent experts to verify and check the information provided by the client.
231.	Policy		The introduction of legal warranty for client provided information is a good approach.	
232.	Policy	Paras 43-44: Monitoring	<p>These paragraphs should explicitly and clearly specify the EBRD's rules and rights in situations when a borrower or a financed company fails to comply with EBRD environmental and social requirements as well as this document's other requirements.</p> <p>In other words, these two paragraphs should answer the following question:  - If a borrower or a financed company fails to comply or does not adequately comply with the requirements, recommendations and procedures set out in this document or fails to implement remedial measures, what will happen to the project and what steps will the EBRD take?</p>	Paragraphs 43 and 44 have been amended taking the comments into consideration. Project specific monitoring requirements are adjusted for each project on case-by-case basis so that the extent of monitoring will be commensurate with the potential environmental and social impacts and issues associated with the project. These two paragraphs are considered to be appropriate to describe EBRD's principles and approach to project monitoring. EBRD Environmental and Social Procedures, which is available on the EBRD website, provide more detail on the way in which monitoring is carried out in practice.
233.	Policy		We think that deleted 2008 ESP paragraphs 34 (p. 11) and 36 (p.12) should stay and not be deleted, as now proposed. Deleted para. 34 provides the rationale why the Bank considers that environmental and social performance of the projects is essential and deleted para. 36 provides clarity on what monitoring mechanisms include (the list is indicative, of course, but it serves a useful example for the client).	
234.	Policy		We think that deleted 2008 ESP para 36 showed an important commitment by the Bank to good environmental and social governance throughout the Bank's financial interest in a project and should be retained.	
235.	Policy		Monitoring – should be clearer about what steps EBRD takes if client performance is unsatisfactory/non-compliant.	
236.	Policy		Question of monitoring is not covered in detail. There are no measures indicated that can efficiently affect projects implementation. Client can change implementation conditions of projects and bank accepts such changes. There is no monitoring of project implementation by the public or by the bank. Unfortunately under current approach there is no way to influence project implementation.	

	Ref.	Issue	Comment	Management Response
237.	Policy		<p>Monitoring, as a crucial part of measuring, reporting, and verification of each project, must be upheld particularly where the client is failing to comply. The current phrasing is missing a timing element, which would clarify this process for both the client and EBRD. We suggest the following changes:</p> <p>If the client fails to comply with its social and environmental commitments, as set out in the legal agreements, EBRD may agree with the client <b>on</b> remedial measures to be taken by the client to achieve compliance <b>within a meaningful and specified time frame for the project and including benchmark dates and performance requirements as necessary</b>. If the client fails to comply with the agreed remedial measures, the Bank may take such action and/or exercise such remedies contained in the financing agreements that it deems appropriate. EBRD will also review with the client any performance improvement opportunities related to projects.</p>	
238.	Policy		When EBRD staff go out to monitor projects, they should always try to meet with local CSOs to verify the situation. EBRD staff often do not meet with CSO—which means that they rely too much on the client’s version of the situation.	
239.	Policy		Monitoring – how is the Bank tracking compliance of its clients? How can EBRD guarantee the closure of mines in a safe and sustainable way?	
240.	Policy		The use of national justice mechanisms to assist in enforcement of project requirements.	
241.	Policy		How does the Bank follow-up in terms of monitoring? What are the sanctions available where the client does not follow its requirements?	
242.	Policy		The responsibility of the Bank [needs to] be established in regard to stakeholders participation. How the Bank will monitor the fulfilment of obligations by the clients in this regard?	
243.	Policy		EBRD finances projects that are “structured to comply” with its standards; however, there is little evidence that the projects actually meet these standards over time. Do you have an estimate (that can be shared with CSOs) of the number of projects that comply / do not comply with your policy each year?	
244.	Policy		Project monitoring – the Bank does not monitor and cannot influence projects once financing has been approved.	

	Ref.	Issue	Comment	Management Response
245.	Policy		This should explicitly include an adaptive management approach to mitigate any unforeseen impacts arising out of the ESIA, or failure in mitigation measures.	
246.	Policy		[We] note that the structure of the ESP and PRs remain unchanged, and that the ESP refers to the Bank's commitments and that Clients are responsible for the structuring the projects to meet PRs, and assessing project's impacts and associated risks. It appears, however, that the revised policy has removed all existing references to monitoring by the EBRD and has placed full responsibility for monitoring on the client. [We] would be interested in knowing more about what has led to this change and how the EBRD will ensure the quality of its clients' compliance monitoring.	
247.	Policy	Para 46: Disclosure of project information	There is no transparency in reporting and too often confidentiality clauses are evoked. This leaves the public with no possibilities to know what the assessments say.	Full assessment for category A projects is made publicly available by the client. For other projects, EBRD discloses a summary of the relevant issues in the Project Summary Documents on its website. Clients are required to disclose meaningful information to potentially affected people in accordance with PR10.
248.	Policy	Para 50: Promoting investments with high E&S benefits	As a development bank, seeking ways to simultaneously improve multiple social and environmental benefits is critical to achieving the EBRD's strong stated sustainable development goals. For example, animal welfare improvements have multiple socio-economic and environmental benefits, and therefore need to be evaluated holistically. This is beginning to happen in leading global forums, and the EBRD should also aspire to such analysis and goals. As such, we support paragraph 50 as written.	Acknowledged.
249.	Policy		2008 ESP paragraphs 44 and 45 on p. 14 should remain. Commitment to dialogue and cooperation with donor governments, international organizations and countries is not an aspirational statement but it should be a principle underlying the Bank's activities.	This is now included in paragraph 18 relating to EBRD technical cooperation and policy dialogue activities, and also reflected in paragraph 50.
250.	Policy		Does the E&S Policy promote green technologies? What are these technologies and how can this be done?	EBRD has initiatives, such as the Sustainable Resource Initiative, as well as technical cooperation projects that include providing assistance to EBRD clients and authorities in its countries of operation in identifying green technologies.
251.	Policy		Could this be also financing for offsets for example? I have wondered if it might make sense for banks to make loans available at slightly lower interest rates to finance the environmental and social investments that are needed to satisfy MH requirements. In other words have loans available to finance the offsets at a lower interest so that the work toward NPI might begin earlier and thereby reduce the risk of biodiversity loss.	This has not been considered to date.

	Ref.	Issue	Comment	Management Response
252.	Policy	Para 52: Entry into force	Does EBRD apply new requirements retroactively?	No, the policy will enter into force six months after Board approval, and the requirements will apply to projects that proceed to Concept Review after the ESP has entered into force.
253.	Policy		Will the Bank's existing clients be required to meet 2008 or 2014 ESP?	The 2008 ESP will apply to projects until the date that a new policy enters into force (six months past Board approval). Projects that have already passed the Concept Review stage will be held to the requirements in force at the time of Concept Review.
254.	Policy		If the project changes between policies, will the new ESP apply to the changed project?	
255.	Policy		After you approve the ESP, will you retroactively apply it to previously approved Projects?	Projects are subject to the policy that was in force at the time they received initial management approval.
256.	Policy	Appendix 1 Exclusion List	We would like to have any industry or activity with high levels of CO2, like coal projects on the Exclusion List. Regions would find alternatives to coal if they could not get financing for it.	All comments relating to excluded activities have been duly considered. However, EBRD does not believe it would be appropriate to introduce additional "no go" or "no finance" areas, considering its transition mandate. EBRD ESP and PRs are considered to provide stringent requirements and a sound framework for financing environmentally and socially sustainable projects. EBRD requires that projects are designed, implemented, and operated in compliance with applicable regulatory requirements and good international practice as described in the PRs. This approach is consistent with other IFIs. All projects undergo environmental and social appraisal to help EBRD decide if the project should be financed based on a case-by-case basis.
257.	Policy		The Bank has published on its website a list of things that it does not finance, such as defence, tobacco, etc. Why are these things not listed in the Exclusion List if the Bank has committed to them? There should be one EBRD Exclusion List.	
258.	Policy		We want no-go areas in the Exclusion List. EBRD is considering a project in a protected UNESCO World Heritage Site and the corridor goes through two national parks. There should be No-Go areas that direct how investment should be guided.	
259.	Policy		This needs to be a full and exhaustive list, there is no mention of CITES, also the agreements such as the Raptor MOU that come under the CMS.	
260.	Policy		Legal documentation Installations for the extraction, processing and transformation of asbestos and substances containing asbestos and the decommissioning and dismantling of such installations.	
261.	Policy		Exclusion list should be amended to include IUCN categories I and II – all projects in these areas should be excluded from EBRD financing.	
262.	Policy		Category A list includes the most dangerous projects, it currently includes also activities that should be excluded – at the same time EBRD is developing sustainable operations. There is a contradiction, and some of the most harmful/risky activities should be moved to the Exclusion List.	



	Ref.	Issue	Comment	Management Response
263.	Policy		<b>EBRD Environment and Social Exclusion List should exclude new coal-fired plants</b> In order to avoid dangerous levels of climate change which put human health in Europe at risk (by most scientists seen as a global temperature increase above 2 degrees Celsius) at an acceptable probability rate, Europe has a very restricted carbon budget until 2050, which does not allow an expansion of the coal-fired power generation capacity. <b>The EBRD should thus adapt its environmental and social policy accordingly. HEAL supports an exclusion of new coal-fired power plants, coal mining and shale gas hydraulic fracturing through the EBRD's Environmental and Social Exclusion List. As a minimum requirement, power plants with CO2 emissions higher than 350 milligram per kilowatt hour should be excluded in the performance requirement 3. All thermal power plants with a thermal capacity of 50 Megawatt or larger should be subject to environmental and social impact assessments and listed as category A projects.</b>	
264.	Policy		[Addition] Projects that would contribute to the extinction of a species or destruction of essential ecosystem services that could result in displacement of populations or severe economic losses to local populations.	
265.	Policy		Add on the Exclusion list: new oil/gas extraction, shale oil/gas projects, new coal TPPs, transport of hydrocarbons in Russian arctic onshore and offshore, floating nuclear power plants.	
266.	Policy		Policy a possibility to say EBRD will not finance certain type of projects because this and this.	
267.	Policy		The support for shale oil /bituminous shale projects should be excluded from the ESP.	
268.	Policy		<b>Add in Appendix 1. EBRD Environmental and Social Exclusion List:</b>  “EBRD will not knowingly finance, directly or indirectly, projects involving the following: (...) (c) Activities <b><u>in protected areas of IUCN category I and II and those</u></b> prohibited by host country or international conventions relating to the protection of biodiversity resources or cultural heritage”.	
269.	Policy		I recognise that this is a international standard but there should be some reference back to PR6 here since this activity may conflict or compromise country objectives to protect natural resources related to PR 6.	

	Ref.	Issue	Comment	Management Response
270.	Policy		What projects are ineligible under the ESP?	See Appendix 1 Exclusion List
271.	Policy		After f I suggest adding another point (point g) which states that the EBRD reserves the right to add other country specific activities which its country strategies have found to be unacceptable from a E&S perspective.	
272.	Policy		This list focuses on environmental and trade impacts without considering gender roles. It should also list potential negative gender impacts such as discrimination against women and/or or men in employment and gender-differentiated access to resources, assets and services.	
273.	Policy		Examples of social impacts are not included in the E&S Exclusion List – why not? An example of this might be projects involving excessive tariff increases.	
274.	Policy		Ice-breakers supported by EBRD were not included in Appendix 2: A category projects. However, they have significant impact on the environment of the Caspian sea. Bank should explain why the funding of this project was supported. EBRD doesn't provide support to oil extraction or energy production. It is recommended to include ice breakers into exclusion list.	EBRD Environmental and Social Exclusion list includes projects that are prohibited under international environmental or social law.
275.	Policy		<p><b>Exclude projects of asbestos extraction, transformation and processing</b></p> <p>The EBRD should further exclude any projects of extracting asbestos as well as asbestos transformation and processing or asbestos-cement products handling, through listing these projects on the Environmental and Social Exclusion List. Asbestos is a human carcinogen, listed as a group 1 carcinogen by the WHO International Agency for Research on Cancer, for which sufficient evidence on the carcinogenicity exists from toxicological and epidemiological studies. Asbestos cannot be extracted under conditions safe for the workers, and is therefore in conflict with PR2 and 4.</p>	
276.	Policy		<p><b>(iv) Page 9: Asbestos fibres and asbestos containing materials</b></p> <p>Asbestos containing materials (ACMs) are a serious and widespread occupational and public health hazard in the region. Asbestos is the biggest industrial killer of all time, but it is still not banned worldwide. It kills thousands of people every week – every five minutes at least one person dies from asbestos diseases. Two million metric tons of asbestos are still being produced every year, and more than 90% of the production is used in cement products for the construction sector. The world's biggest producer and exporter of asbestos is Russia, at over one</p>	

	Ref.	Issue	Comment	Management Response
			<p>million tons each year. Kazakhstan is the third biggest exporter in the world today. Even where asbestos has been banned, construction workers are still exposed to existing asbestos in buildings during maintenance, renovation and demolition work. Millions of tons of asbestos were used in buildings in industrialised countries in the past. Much of this asbestos is still in place and cannot be easily identified from its appearance. Workers and the community can be exposed to this asbestos and breathe it in without realising it. The current EBRD exclusion list is the same as that of the IFC. However, the situation in the EBRD region is rather different, given that there is a complete ban on asbestos fibres including all ACMs throughout the European Union and in many other countries beyond its borders. The reality is that ACMs almost always do contain less than 20%, asbestos cement normally contains 10-15%, but depending on their condition or the activity being undertaken, this can represent a deadly exposure to workers and the community. Footnote 20 on page 9, which exempts from the exclusion list ACMs with less than 20% asbestos, should therefore be deleted such that funding of all ACMs is excluded. The EBRD should not finance the purchase or use of any ACMs, and should provide guidance on alternatives, which exist for all applications, and for the management of existing ACMs in buildings, as well as best-practice and legal requirements for handling during demolition, renovation or abatement operations.</p> <p><b>(v) Page 10: Asbestos Manufacturing.</b></p> <p>In practice, the EBRD does not finance extraction or manufacturing of asbestos, so it would be sensible to remove this language, i.e. paragraph 5 of Appendix 2 on page 10.</p>	
277.	Policy		<p><b>The current EBRD exclusion list does not include items informally excluded by the EBRD: weapons production and equipment, alcohol, gambling and tobacco.</b> The EBRD in various places on its website states that it does not finance defence equipment, gambling or tobacco. In some instances it also adds strong liquors, in some not. In our opinion it would be logical to bring these exclusions into the Environmental and Social Policy so that clients and other stakeholders can clearly see in one place what is excluded and what is not. We propose the inclusion also of all alcohol. Although seen in many societies as socially acceptable, there is no reason why it should be financed by public money. We also propose clarification on what constitutes defence equipment. For comparison the EIB's exclusion list from April 2013 has: 1) Ammunition and weapons, military/police equipment or infrastructure including explosives and sporting weapons.</p>	<p>Under a generally agreed principle, EBRD does not finance these activities. However, these activities are not excluded on prohibited environmental and social grounds. Therefore, they are not included in ESP Appendix 1.</p>

	Ref.	Issue	Comment	Management Response
			<p>The Nordic Investment Bank's Sustainability Policy's exclusion list also includes: 3: Production of ammunition and weapons, and weapons carriers</p> <p><b>Recommendation:</b> Add the following to the exclusion list: • Weapons, ammunition, military and police equipment or infrastructure, including explosives and sporting weapons • Alcoholic beverages • Tobacco products • Gambling</p>	
278.	Policy	Appendix 2 Category A List	<p>This list allows environmentally and social screening of project applications by the EBRD. However, there are no social prohibitions indicated. Sometimes bank's projects lead to very serious social consequences, especially when bank insists on the increase of tariffs. Tariffs are seriously increasing in the Kyrgyz Republic. Why this chapter does not include a description of the social consequences of the projects?</p>	<p>The list of indicative Category A projects includes also social criteria, specifically projects which may result in significant adverse social impacts to local communities or other project affected parties, and projects which may involve significant involuntary resettlement or economic displacement.</p> <p>Part of EBRD's mandate is to develop sustainable services. This may require cost recovery and charging for services in order to make them both sustainable and effective under approved policies. It would not therefore be appropriate to put these types of projects on the exclusion list. The policy includes a requirement for the Bank to ensure that such services are affordable for the most disadvantaged.</p>
279.	Policy		<p>Appendix 2 lists Category A projects which have potentially adverse environmental and/or social impacts. These major infrastructure and "transformation-conversion" projects must integrate a gender analysis to ensure that women as well as men benefit and are not harmed.</p>	<p>The list of indicative category A projects has been reviewed and brought up to date with EU EIA Directive, Annex I, and similar lists in UNECE Espoo and Aarhus conventions, as appropriate.</p>
280.	Policy		<p>Pressure to make decisions faster – but law requires that public environmental assessment has to be done. Criteria for requiring EIAs should be improved, e.g. animal farms, in Belarus law numeric threshold for eg number of cows. EBRD should adopt the same.</p>	
281.	Policy		<p>A-category projects – concerned about how the mining projects are being developed. There are two separate bullets/types of mining projects in the indicative list of category A projects, these should be combined under one bullet. EBRD Mining Policy does not have similar conditions – to avoid contradictions, the Mining Policy should reflect the commitments in the ESP.</p>	
282.	Policy		<p>Again this list seems appropriate but as for my suggestions for annex 1, I suggest that EBRD has a note saying that it may add other activities to the Category A list where country strategies have identified a need to do so for certain sectors or activities in country. Modified Annex 1 and Annex 2 could be added to country strategies. Also country strategies and annex 1 and 2 should consider other aspects raised in PR 3 related to resource management/depletion and as well as material criticality [which is a growing area of importance for business]. Again material criticality and its potential economic impacts should be considered in</p>	

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			country strategies.	
283.	Policy		<b>IUCN categories III to VI should be considered as category A projects by definition.</b> This is crucial as national legislation may vary significantly across the region and areas of particular conservation value may have some exclusions for human activities. These legal gaps should definitely be bridged in the EBRD policy. Accordingly, this principle should lead to significant revision of PR 6 as soon as operations in such areas will fall either under list of category A projects.	
284.	Policy		<p><b>1. Category A Project Types 6, 8, 14, 17, 19, 20, 22 and 23 - “Large-Scale” and “Industrial Scale”</b></p> <p>In the descriptions for Category A project types 8, 14, 17, 19, 20, 22 and 23 in Appendix 2, the non-defined term “large-scale” appears, and in the description for project type 6, the non-defined term “industrial scale” is used. The use of these non-defined and open-ended terms to describe these specific types of Category A projects is in contrast to the numerical capacity, throughput or size criteria provided for most of the other types of Category A projects. Therefore, it is recommended that the EBRD provide specific numerical capacity, throughput or size criteria for these eight listed types of Category A projects.</p> <p><b>2. Category A Project Type 15 – “Commercial Purposes”</b></p> <p>Rather than use the non-defined term “commercial purposes” to describe the type of petroleum and natural gas projects that qualify as a Category A project, it is recommended that a specific daily production rate or some other throughput-based criterion be specified – e.g., “x” thousand barrels (or cubic metres) of crude oil produced/processed per day or “y” million cubic feet (or cubic metres) of natural gas produced/processed per day.</p> <p><b>3. Category A Project Type 26 – “High Biodiversity Value”, “Archaeological Importance”</b></p> <p>Definitions should be provided for the terms “high biodiversity value” and “archaeological importance” – otherwise these terms could be subject to inconsistent application and/or misinterpretation. Admittedly, unambiguous definitions for these terms may be difficult to provide; nevertheless, any definitions of “high biodiversity value” and “archaeological importance” that are included in Appendix 2 (and elsewhere in the Environmental and Social Policy and the Performance</p>	

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			<p>Requirements) should be consistent with the terminologies of credible recognized independent international organizations; for example:</p> <ul style="list-style-type: none"> <li>• <i>High Biodiversity Value</i> <ul style="list-style-type: none"> <li>- UNESCO’s Operational Guidelines for the Implementation of the World Heritage Convention (2013) publication (<a href="http://www.unesco.org">www.unesco.org</a>) states that “Outstanding Universal Value means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.” This document also states that a property can have “Outstanding Universal Value” if it provides “outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals” or “contains the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of Outstanding Universal Value from the point of view of science or conservation”. The terms “exceptional”, “outstanding”, “significant” and “importance” are not defined in the document, however.</li> <li>- The International Finance Corporation’s Performance Standard 6 (2012) (<a href="http://www.ifc.org">www.ifc.org</a>) defines “high biodiversity value” as “significant biodiversity value, as determined by the risks and impacts identification process required in Performance Standard 1”. However, the term “significant” is not defined in either Performance Standard 1 or Performance Standard 6.</li> <li>- According to The Economics of Ecosystems &amp; Biodiversity initiative (<a href="http://www.teebweb.org">www.teebweb.org</a>), “biodiversity” includes “diversity within species, between species, and between ecosystems”; biodiversity may be described quantitatively, in terms such as richness, rarity, and uniqueness. “Value” is defined as “the contribution of an action or object to user-specified goals, objectives, or conditions”. However, definitions for “high” or “high biodiversity value” are not forthcoming.</li> <li>- In the World Business Council for Sustainable Development (<a href="http://www.wbcsd.org">www.wbcsd.org</a>) publication entitled “Ecosystem services and biodiversity tools to support business decision-making - Version 1 - April 2013”, “biodiversity” is defined as “the variability among living organisms within species, between species, and between ecosystems” and “value” is defined as</li> </ul> </li> </ul>	

	Ref.	Issue	Comment	Management Response
			<p>“the material or monetary worth of something ... value may also be non-monetary e.g., existence value”. However, definitions for “high” or “high biodiversity value” are not offered.</p> <ul style="list-style-type: none"> <li>– The High Conservation Research Network (<a href="http://www.hcvnetwork.org">www.hcvnetwork.org</a>) defines the term “high conservation values” as “biological, ecological, social or cultural values which are considered outstandingly significant or critically important, at the national, regional or global level.”</li> <li>• <i>Archaeological Importance</i> <ul style="list-style-type: none"> <li>– UNESCO’s Operational Guidelines for the Implementation of the World Heritage Convention (2013) publication provides several examples of sites or materials possessing archaeological importance – see Clause 77 Parts (ii) - (vi).</li> <li>– The International Finance Corporation’s Performance Standard 8 (2012) includes the term “cultural heritage of significance”, but no definition of this term or “importance” is provided.</li> </ul> </li> </ul>	
285.	Policy		Nuclear power stations appears on the App 2 “Category A”List, along with thermal.. Although this is not really a change from previous Policy, but - in practice – our understanding is that the Bank does NOT fund new-build or upgrade of nuclear power stations? May be helpful to clarify the Bank policy vis a vis funding of nuclear power stations.	
286.	Policy		<p>The projects that are subject to the extra scrutiny in Category A are important because of their significant and/or unmitigated social and environmental impacts. The examples listed in paragraph 25, while important as a marker for animal production operations, is not sufficient for on-going, staged finance or where this project may place social or environmental constraints beyond a certain threshold that may place significant additional pressures, particularly locally.</p> <p>Additionally, while Council Directive 2011/92/EU sets the thresholds for installations for the intensive rearing of poultry or pigs like those outlined in the ESP draft, Council Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) sets the thresholds as laid out in the EBRD’s 2008 ESP. The latter thresholds are also part of the OECD Common Approaches. According to the precautionary principle, we suggest that the EBRD follows the lower thresholds and return to the 2008 animal levels for this paragraph.</p> <p>Therefore, we suggest the following changes to Appendix 2, paragraph 25:</p> <p>Installations for the intensive rearing of poultry or pigs with more than:</p> <p>(a) <b>40 000 places for poultry</b> 85 000 places for broilers, 60 000 places</p>	

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			for hens; (b) 32 000 places for production pigs (over 30 kg); or (c) 90750 places for sows. <b>This requirement encompasses cases where EBRD’s aggregate investments (with or without other financial partners) to the same company or facility reaches these thresholds:</b>	
287.	Policy		“Shale gas/shale oil” projects (as well as other industrial projects) are often categorised as B by EBRD; however, the disclosure requirements for these projects are less than those categorised as A.	
288.	Policy		Categorisation of projects. A v’s B v’s C. Category A listing does not include icebreakers (ships) in it.	
289.	Policy		The indicative list for Category A projects, Appendix 2, lists the development and decommissioning of thermal power projects of 300 MW or more as category A projects. This criteria related to TPPs should also include the “refurbishment” of these facilities and not just construction/decommissioning (as current practices typically categorise refurbishment projects as category B). Refurbishment works related to TPPs should trigger a full ESIA even if one is not required by local governments.	
290.	Policy		<p>Paragraph 1. We would suggest the following wording:</p> <p>14. Crude oil refineries and installations for the gasification and liquefaction of 150 tonnes or more of coal or bituminous shales per day.</p> <p>Paragraph 2. We would suggest the following wording:</p> <p>2. Thermal power stations and other combustion installations with a heat output of 100 MW or more, including the dismantling or decommissioning of power stations (including nuclear power stations and other reactors, except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 MW continuous thermal load).</p> <p>Paragraph 9. We would suggest replacing 1,350 tonnes with 1,000 tonnes.</p> <p>Paragraph 11. We would suggest the following wording:</p> <p>11. Large dams and other impoundments designed for the collection or permanent storage of water and for electric power generation (large hydroelectric power plants).</p> <p>Paragraph 13. We would suggest the following wording:</p> <p>Industrial plants for the a) production of pulp from timber or similar fibrous materials, b) production of paper and board with a production</p>	



	Ref.	Issue	Comment	Management Response
			<p>capacity of 10,000 air-dried metric tonnes per year or more.</p> <p>Paragraph 14. We would suggest the following wording: 14. Mining enterprises, large-scale extraction of peat and bulk building materials, open-cast mining and quarries and metal ore or coal enrichment.</p> <p>Paragraph 15. We would suggest the following wording: Extraction of petroleum and of natural and shale gas for commercial purposes.</p> <p>Paragraph 16. We would suggest replacing 20,000 tonnes with 100,000 tonnes.</p> <p>Paragraph 18. We would suggest replacing ‘150,000 population’ with 75,000 population</p>	
291.	Policy	Guidance Notes	EBRD has mentioned various guidance materials to be developed (or which already exist for FI clients). Can these be included in an Annex to the final ESP?	EBRD will prepare a number of guidance materials to provide more detailed description of the ways in which the ESP and PRS can be translated into practice and action. Some guidance notes will be consulted with civil society and industry associations, where appropriate.
292.	Policy		Do you intend to consult with civil society on guidance notes? We would like to be consulted on resettlement, human rights, supply chain, labour. How do we know what is coming and when we can give input?	
293.	Policy	Good Practice Guidelines	Large HPPs – it is recognised that EBRD’s energy strategy covers these, but these are controversial projects and the ESP should have a reference to “Hydropower Sustainability Protocol”.	EBRD continuously identifies international good practice guidance and uses it in its project appraisal. ESP is not the appropriate document to list such guidance.
294.	Policy		Mongolia mining – mining can have serious adverse impacts on people and ecology. Local CSOs have developed guidelines for sustainable mining and we request EBRD to take these into consideration as well as to work closely with Mongolian CSOs.	
295.	Policy	Consultants	How do you verify independence of experts/consultants? How about when client is paying them?	The Bank reviews its clients’ consultant arrangements on a case-by-case basis. In certain cases, EBRD may use its own independent consultants to verify the information provided by the client and its advisors.
296.	Policy	Consultants	Policy vs practice – quality of international consultants, EBRD should have white and black list of consultants. If a consultant fails/performs poorly in one country, it should be excluded from other work for the Bank for some time.	EBRD use of consultants follows the Bank’s procurement rules and procedures for tendering of consultant services.
	<b>PR1</b>			
297.	PR1	Terminology	<b>Inappropriate Use of the Words “Audit” and “Auditing”</b> In several instances in Performance Requirement 1, the words “audit” and “auditing” are used to describe an activity aimed at evaluating a	The terms ‘environmental audit’ and ‘auditing’ have been established in the ESP for a considerable time and are well understood by stakeholders and shareholders. We note the point being made but have decided to maintain the

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			client's/project's level of environmental and social performance. [We] recommend that these terms not be used since the term "audit" is more correctly applicable to the evaluation of financial matters – the terms "assess"/"assessment"/"assessing" or "evaluate"/"evaluation"/"evaluating" should be used instead.	use of this terminology.
298.	PR1	Social Impacts	Social impacts of PPPs (affordability) – from experience, there are always issues with social rights, access, affordability in these privatisation projects (specifically in the water sector); disclosure/access of information is often weak (e.g. contracts); there is often a lack of capacity at the local level to enforce commitments in the PPP contracts; often issues of corruption with the multinational companies involved; how do you regulate PPP projects? Bottom line: How do you improve the accountability of large private sector companies in these PPP projects?	PPP Projects are evaluated in line with the Performance Requirements and disclosure and consultation are undertaken in line with the requirements of PR10 and the PIP. The Bank has separate processes that review integrity.
299.	PR1	Social appraisal	Social conflicts and risks need to be avoided—EBRD should require a social conflict assessment be carried out.	Social appraisal is carried out as part of project evaluation and issues around conflict and dispute is considered at that time.
300.	PR1	Social Impacts	We request to have social requirements to be reflected in other parts of the policy, not only in the social PRs.	Social impacts are considered in numerous PRs. The PRs are issue specific and where social impacts are possible (for example land acquisition, pollution impacts, restriction of access to resources etc) these are dealt with in a number of PRs but as appropriate to the topic.
301.	PR1	Social Impacts, Action Plans	This policy really addresses the environmental component but the social component appears inferior in the hierarchy. How are these components integrated into, and addressed by, action plans?	Social impact evaluation is an integral part of the Project appraisal process and social impact mitigation actions are included within the Environmental and <u>Social</u> Action Plans along with environmental mitigations.
302.	PR1	Stakeholder Engagement	It is also noted that stakeholder "consultation" is demoted to "engagement" (e.g. PR1 proposed paras. 13 and 15) (which was and is part of the title for PR10). The Espoo – and in particular the Aarhus Convention - refers to public participation (the same the public participation Directive under the EU). We think that "consultation" and "participation" should be preferred over "engagement".	The term "Stakeholder Engagement" is used, as it covers notification, information disclosure, consultation, reporting, managing of grievances, and all means of communication with affected or interested parties. It is not a "demotion" from the term "public consultation," which was previously used. We also deem that workers were stakeholders, even if they are not considered public, and they should have information, consultation, and the ability to raise grievances. We therefore chose the more comprehensive term. We do not use the term "public participation" as this implies that part of the decision-making is delegated to, or shared with the public, and EBRD is not in a position to ensure this. For some projects, where there are no significant impacts and no changes are proposed, the public may only be informed, not consulted. We needed a term that encompasses different characteristics of the project, impacts, affected and interested parties.
303.	PR1	Benefit Sharing	Loss of benefits and public good (e.g. natural resources). Benefit sharing for local population. So for example, a road project may result in benefits for commercial organisations but not for local people.	The policy and PR1 now establishes that where possible clients should provide opportunities for benefit sharing.

	Ref.	Issue	Comment	Management Response
304.	PR1	Displaced Persons	We did not see any requirements for the management of refugees in the ESP (this is a real issue in Jordan, Turkey and SEMED in general).	EBRD's projects are unlikely to relate to the management of refugees. However, the policy does recognise refugees as a vulnerable group and therefore special attention needs to be paid to their needs in the event that they are affected by one of EBRD's projects.
305.	PR1	Para 3	Paragraph 3 should include the following: • To uphold gender, sexual orientation and gender identity as central components to this PR.	The PR has as its objective the setting out of requirements that a client has to meet and the types of assessments needed. Through the definition of social issues, the Bank believes that it is requiring clients to uphold principles of non-discrimination and equality.
306.	PR1	New Para 7	7. EBRD ensures that each Environmental and Social Impact Assessment conducted for a project will take a close look at the gender inequalities and discrimination on the basis of sexual orientation or gender identity. ESMS will take effective measures to ensure both the EBRD's and client's capability to reduce negative impacts. In order to compile sufficient and accurate data the EBRD will include civil society organizations, which have expertise in gender and SOGI issues, in the process of the assessment and guarantee them easy access to relevant information, a secure platform to communicate with the EBRD and a meaningful voice in the [consultation].	With the new definition of social issues. EBRD does require its clients to take such issues into consideration. However, EBRD cannot require clients to involve specific CSOs but can, if appropriate, suggest that they work with such groups and can include this in guidance notes which are to be prepared.
307.	PR1	Para 7 ESIA	Central to this approach is the <i>early</i> application of the mitigation hierarchy. [Add word "early".]	This is implicit. The client's assessment process must follow the mitigation hierarchy approach, which states that clients must first take measures to avoid impacts. With respect to biodiversity, paragraph 8 of PR 6 further states that <i>Through the assessment process, the client should identify and characterise, early in the project lifecycle, the potential project-related opportunities, risks and impacts...</i>
308.	PR1	Para 9	There should be specific reference to a projects "area of influence" <i>The environmental and social assessment process will also identify and characterise, potential significant environmental and social issues associated with the projects "area of influence", including indirect impacts, this includes risks associated with activities, facilities or other aspects which are not part of the financed project, but which may be influenced by the project, may not have happened without the project or which may affect the projects ability to meet the PRs.</i> Indirect impacts should be explicitly mentioned for the sake of clarity. It is being referred to but not being made explicit	The text was drafted to address issues related to associated facilities. Experience has shown that AoI varies greatly from Project to Project.
309.	PR1	Para 11	The assessment and development of mitigation measures may also here be required to be carried out or verified by independent experts	The Bank shall review the proposed mitigants and determine on whether these are appropriate. This paragraph refers to Category B assessment requirements and there is no absolute requirement for independent assessment in this case, as is in place for Category A.

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310.	PR1	Para 24	In some specific circumstances, such as when activities occur that may potentially impact on a sensitive local, key biodiversity feature or a critical habitat an independently recognised expert should be required to undertake or review the monitoring.	The paragraph stipulates that independent and/or specialist input may be required. This shall be agreed with the Bank as part of Project monitoring.
311.	PR1	Ecosystem Services	<p>In PR 1, EBRD should set the stage for both addressing project impacts and dependencies on ecosystem services.</p> <p>--Paragraph 7 requires clients to “identify and consider the potential environmental and social impacts and issues of the project in an integrated manner”. EBRD could consider adding “using the concept of ecosystem services or other integrative concept” after “(...) in an integrated manner”.</p> <p>--Paragraph 9 requires EBRD’s clients to “identify and characterise potentially significant environmental and social issues associated with activities, facilities or other aspects which are not part of the project, but which may be influenced by the project or which may affect the project’s ability to meet the PRs”. EBRD could explicitly require an assessment of dependence on ecosystem services. While a project’s risk analysis or feasibility study is likely to assess the project’s dependence on water or a few other operational inputs, it is likely to miss the project’s dependence on the environment for operational processes such as waste water treatment or pollination, or for protecting its infrastructure against flooding or land erosion. Systematically assessing a project’s dependence on ecosystem services will help EBRD and its clients better identify, assess, and manage the environmental risks arising from ecosystem change.</p>	PR1 sets the framework for all subsequent PRs – including PR6, which addresses Biodiversity. The PRs should be read together, as this is how they will be applied.
312.	PR1	Project Alternatives	<p>The PR states (para. 10) that “<i>The ESIA will include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed.</i>” However project sponsors often dismiss alternatives as unfeasible without any publicly-available evidence being produced. The PR should therefore stipulate that the alternatives to be assessed are to be agreed during the scoping phase.</p> <p><b>Recommendation:</b> Amend para. 10 as follows (addition in bold): “<i>The ESIA will include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed. <b>The alternatives to be examined will be defined during the scoping phase</b></i> .”</p>	It is not possible to be prescriptive on the scoping stage of the ESIA process, and the Bank are not always involved in such scoping. The Bank will, on a Project by Project basis, determine whether the alternatives analysis includes a reasonable scope of alternatives. If the Bank deems that not all reasonable alternatives have been included, then further assessment by the Project shall be required.
313.	PR1	Para 9	Paragraph 8 says that the assessments will cover all relevant social and environmental impacts and the relevant stages of the project cycle.	The ESIA process includes all stages of the Project cycle, including closure, restoration and aftercare as appropriate to the nature of the Project.

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			Paragraph 9 says that the assessments will identify and characterize impacts that are not part of the project, but that are influenced by the project or that may affect the project's ability to meet the PRs. Does this mean that the project must consider and accept some responsibility for impacts that it engenders, but that will develop after the project itself has concluded? For example, if the project is to build a road, is there an obligation to put into place, with appropriate funding a mechanism to head off and/or manage land speculation and associated displacement that road construction will engender? If so, this is very important, and the language could be clearer. If not, it should.	
314.	PR1	Para 16 ESMP	[First sentence] Just a question whether mitigation is a step in the mitigation hierarchy or should the mitigation steps be avoidance, minimisation (restoration where appropriate) and then compensation.	The ESP and PRs have been revised to indicate that: <i>The mitigation hierarchy comprises measures taken to avoid creating environmental or social impacts from the outset of development activities, and where this is not possible, to implement additional measures that would minimise, mitigate, <b>and as a last resort</b>, offset and/or compensate any potential residual adverse impacts</i>
315.	PR1	Para 19	There is no requirement that a grievance mechanism be established, as there is with the other PRs. Why is that? For example, the PR states that the social and environmental assessments must include meaningful engagement with stakeholders. If stakeholders find that their engagement is not meaningful, where do they go? Is this covered under the grievance mechanism associated with PR 10 (p. 70)?	The requirement for a grievance mechanism is described in PR10. For sake of clarity, for direct investment projects that do not take place through a Financial Intermediary, all PRs with the exception of PR9 apply. Therefore a grievance mechanism is required.
316.	PR1	Baseline data	The term “baseline data” has been used in Performance Requirement 1 and in several other PRs (see for example Performance Requirement 6, paragraph 8 and Performance Requirement 7, paragraph 20, Section 1, first bullet) to describe the initial environmental and social setting dataset acquired by/established for a project. It is important to realize, though, that “baseline data” does not embody the concept of natural variability – rather, a project’s initial environmental and social database is more correctly a “snapshot in time”, with subsequent data acquisition and analyses being required to establish the true environmental and social frame of reference for a project and discern direct project-attributable alterations in conditions. Accordingly, [we] recommend replacing the term “baseline data” with “initial dataset” or “initial environmental and social dataset” throughout the Environmental and Social Policy and the Performance Requirements.	The Bank will make a determination as to the requirements of a baseline data-set. It is common, for example with biodiversity or with water resources, that we will require a data-set that is representative of the natural variability within parameters or issues. Therefore the use of the term ‘baseline data’ is appropriate.
317.	PR1	Human Rights Due Diligence	There is no explicit request for clients to implement human rights due diligence.	Text has been amended in light of the comments on Human Rights.
318.	PR1	Human Rights Due Diligence	The EBRD should explicitly require human rights due diligence to ensure that the Bank does not support activities that will cause, contribute to, or exacerbate human rights violations. Having stronger human rights due diligence will help the Bank to navigate challenging	Text has been amended in light of the comments on Human Rights.

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			environments to ensure that its investments lead to positive development outcomes. Human rights due diligence should not be “front-loaded,” but instead should take place throughout the life of the investment. Thus, the process that the EBRD takes to avoid contravening a country’s human rights obligations should include four steps: (1) assessment of a country’s human rights challenges and progress during the design of each country strategy; (2) regular monitoring of each country for updates; (3) a more targeted assessment during the appraisal of each individual investment; and (4) monitoring of human rights risks throughout the life of the project in a way that does not rely exclusively on client-produced reports for information.	
319.	PR1	Human Rights Due Diligence	<p><b>Lack of Human Rights Due Diligence</b> The draft Environment and Social Policy’s treatment of the environmental and social assessment process fails to expressly consider human rights. Environmental and social impact assessments rarely identify, assess, or address the full range of human rights impacts a project is likely to have. The Bank should explicitly integrate human rights considerations into its overall project appraisal. It should explicitly require human rights due diligence so as to ensure that the Bank does not support activities that will cause, contribute to, or exacerbate human rights violations. However, the draft policy appears to step backward in this regard.</p> <p>The policy should clearly state that a client’s previous human rights record shall be taken into account in project appraisals, and that human rights abuses in the context of a Bank funded project may be a bar to future lending unless that client can show that it has done all that it can to ensure the infringements are adequately remedied. Unlike the practice of the World Bank, the draft policy requires the EBRD simply to review the social and environmental impact assessments prepared by clients for their own projects.</p> <p>There is a serious conflict of interest if the client, who stands to benefit if the project is approved, is delegated the responsibility by the EBRD for assessing the potential and actual impact for the EBRD. It is unacceptable for the EBRD to distance itself from its responsibility for the impacts of its funding. The lack of active engagement by the Bank in conducting the assessment is made worse because potentially affected people are given neither the necessary information nor the opportunity to raise concerns about projects at an early stage in the Bank’s decision-making process. As a result, they are unable to participate in decisions as to how potential negative impacts can be</p>	Text has been amended in light of the comments on Human Rights.

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			<p>addressed early on and managed.</p> <p>Furthermore, the draft policy should require the Bank to ensure that businesses it finances implement best practice for human rights due diligence. This includes: a human rights policy, a human rights impact assessment when the risk of a human rights abuse is identified, monitoring and reporting on implementation of human rights due diligence processes, and access to effective remedies. The Bank should require its clients to act in line with widely-accepted standards on business and human rights, as reflected in the UN Framework and Guiding Principles on Business and Human Rights, otherwise it risks providing support to projects linked to human rights abuses. In addition, the new draft policy creates the possibility for environmental and social project appraisals to be carried out after Board approval of the project and signing of financial agreements. This is too late in the process—it would exclude public participation at the decision-making stage and effectively sends a signal to clients that they can treat these appraisals as a formality.</p>	
320.	PR1	Transboundary	<p>The Bank often finances large-scale projects that have potential long range transboundary environmental impacts. This aspect should be reflected in the revised ESP and PR1, so that there is a clear obligation for the client and the authorities, under the jurisdiction where the Bank operates, to carry out the transboundary procedures under the [Espoo] Convention. This can be done by explicit references to the likely significant adverse transboundary environmental impact and its evaluation as part of the Bank's policy in the ESP (e.g. into para. 30 on the overall approach to project appraisal; or in paras. 39 and 40, as part of the documentation/information to be submitted to inform the decision-making by the Bank's Board of Directors). Moreover, PR1 should include among its objectives (proposed para. 3 or preferably by a new paragraphs specifically referring to transboundary obligations) that transboundary procedures (notification, EIA, consultations) should be followed, in case of potential significant adverse environmental impacts and this should be reflected further in the PR (obligation of the public sector client/public authorities and obligation for the private client to cooperate with the public authorities). ( According to the General guidance on enhancing consistency between the Convention and environmental assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia, to be adopted by the MOP at its next session in June 2014, there are certain steps in the transboundary procedure that can be undertaken by the</p>	<p>Details on the regulations and treaties that inform the Bank's ESP are provided in the Policy section of the document. Other references have been removed to avoid duplication and repetition.</p>

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			public authority only and may not be entrusted to the developer/project proponent.) This is appropriate, since Parties to the Convention are bound to the obligations they committed to; and the procedures set out of the Convention are now accepted as best international practice and customary law. Ensuring transboundary EIA procedures under the Convention enhances international cooperation and good neighborly relations.	
321.	PR1	Transboundary	The PR should include among its objectives (proposed para. 3 or by way of a new para.) that transboundary procedures (notification, EIA, consultations) should be followed, in case of potential significant adverse environmental impacts and this should be reflected further in the PR (obligation of the public sector client/public authorities and obligation for the private client to cooperate with the public authorities).	<p>References to Aarhus and Espoo conventions have been re-inserted in the policy, paragraph 34, as follows:</p> <p><i>EBRD's appraisal requires the clients to identify stakeholders potentially affected by and/or interested in the projects, disclose sufficient information about the impacts and issues arising from the projects and consult with stakeholders in a meaningful and culturally appropriate manner. In particular, EBRD requires the clients to engage with the project stakeholders in proportion to the potential impacts associated with the project and level of concern. Such stakeholder engagement should be carried out bearing in mind the spirit and principles of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. For projects subject to ESIA that have the potential to have significant environmental impacts across international boundaries, the Bank will encourage the approach of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context, regardless of geographical location of a project or its potential impacts. The Bank may, in some cases, conduct its own public consultation activities to gauge stakeholder views. Stakeholder identification and engagement may also be built into the Bank's technical cooperation activities, as appropriate.</i></p>
322.	PR1	Espoo/Aarhus Conventions	References to the Espoo Convention should be spelled out in PR1 (see deleted fn.4), because they are of particular relevance for the implementation of this PR (see also general comments above). The same should be considered concerning references to the Aarhus Convention.	
323.	PR1	Espoo and Aarhus Conventions	<p><b>PR1, deleted footnote 4:</b> We are very disappointed to see that the references to the Aarhus and Espoo Conventions in footnote 4 have been deleted and, in light of our general comments on this point above, respectfully ask that the references be reinserted here.</p> <p><b>PR1, para. 4:</b> To avoid confusion among clients and stakeholders, please clarify (perhaps in a footnote) that PR1 applies to both category A and B projects.</p> <p><b>PR1, deleted para. 6:</b> Whilst it would be important to clearly state that such a list is only indicative and non-exhaustive, we consider that the 2008 policy's list of elements that may assist in defining the area of influence was a helpful starting point.</p> <p><b>PR1, para 19:</b> We suggest to add the following new sentence after the third sentence: "Specific personnel should be designated as contact points for affected communities and other stakeholders, and their contact details made prominently accessible on the client's website and at the project site itself".</p>	
324.	PR1	Area of Influence	An indicative and non-exhaustive list of the elements that may assist in defining the area of influence (deleted para. 6 on p. 24) may be useful	



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325.	PR1	Environmental and social assessment	Paragraph 7. Environmental and social assessment. Suggested wording: Through the environmental and social assessment process, which may include the assessment of impacts, including cumulative and transboundary impacts (continue with the original text)....	The consideration of cumulative and transboundary impacts has been included in PR1 paragraph 10, that sets out the requirements for an ESIA.
326.	PR1	Page 14 Para 12	No reference to health and safety performance. <b>Add a new bullet point</b> to say: “Current health and safety performance, including accident statistics”	The assessment of health and safety performance is an important component of the Bank’s current environmental and social appraisal process for existing projects. In the current policy, health & safety is defined under the definition of “social”. Accordingly, we do not feel the need to single out health and safety in this paragraph. It is also implicitly covered under the requirement to assess “potential risks, liabilities and opportunities associated with the existing facilities and operations”.
327.	PR1	Corporate Finance	Para 12 –general corporate finance to multi-site companies, will there be public consultations or stakeholder engagement on these projects? Will corporate audit results be publicly disclosed?	For confidentiality reasons, EBRD does not disclose the full results of corporate audits. We do however summarise the issues and the ESAP in the PSD and we require that our clients meet the requirements of the PRs, including relevant stakeholder engagement requirements in PR10.
328.	PR1	Paragraph 21: Supply Chain	Outlines supply chain requirements. This is very challenging to implement on large infrastructure projects. Additional guidance would be welcomed to help consultants with their clients.	We recognise your concern regarding this complex issue. Additional information and guidance can be found in PRs 2 and 6. Following the adoption of the 2014 ESP, we will consider your request in preparing guidance material.
329.	PR1		Para 21. It is very challenging for consulting companies to implement large infrastructure projects under the requirements settled down. Additional guidance and clarification would be welcomed to help consultants.	
330.	PR1	Loss of public goods	It is advised to pay higher attention to the loss of public goods. The commissioning of the roads ... can serve as an example. Bank [may finance a road], including tariff increase and the local population gets affected by the land acquisition and subsequent increase of road use tariffs for the local population—[but the road is used to export goods away from the local population]. [How can local people benefit?]	Social impacts, including possible increases in charges are assessed during the ESIA process, and public opinion is taken into account during the public consultation requirements.
331.	PR1	Alternatives	Positive that ESP/EBRD obligations for client to look for alternatives.	Acknowledged.
332.	PR1	Client Role	The Bank’s clients are private sector actors. In carrying out projects financed by the Bank, the developers (private sector) should comply with national legislation on urban planning and construction, industrial applications, environmental law (including on EIA which for Parties should respect their Espoo obligations), safety and security, etc. All these standards of national applications should at least be at the same level as the standards in the ESP and PRs. Concerning the carrying out of the (transboundary) EIA procedure, best practice demonstrates that	Details on the regulations and treaties that inform the Bank’s ESP are provided in the Policy section of the document

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			<p>most of its main elements cannot be entrusted solely to the developer/project proponent of an activity (unless the proponent was the State). This is also the view of the Implementation Committee under the Convention. It is therefore recommended that the Bank abides by this best practice, following also the recently developed General guidance on enhancing consistency between the Convention and environmental assessment within State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia, to be adopted by the MOP at its next session in June 2014. It is an opportunity now that the ESP and the PRs are being revised to further the obligation of the client to abide by the laws of the country/ies where the project takes place and importantly refer to the terms of cooperation with public authorities, when this is prescribed under best international practice. In many instances private sector/developer/proponent cannot substitute to public authorities in carrying out obligations stemming from international law (such as in public consultations or notification to potentially affected countries).</p>	
333.	PR1	ESIA—health impacts	<p>Need to bolster the possibility to trigger more in-depth health impact analysis in the ESIA process when and as needed. To some extent this is covered in item 17 under PR4. However, more explicit language related to the need to consider potential impacts on human health and well-being should be included in PR1.</p> <p>Ensuring adequate coverage of health in the ESIA process can also be addressed a part of the development of procedures to support the operationalization of the E&amp;S activities. Here clarity should be provided about where and when health expertise is required for quality control and due diligence.</p> <p>Guidance should also be developed/provided so as to ensure that local and national health authorities are meaningfully engaged in the ESIA process, particularly if PR4 and/or other issues (e.g. resettlement) with strong implications for health are triggered during the screening and classification of project proposals. Similar guidance might also be need to ensure that when health issues are identified, stakeholder engagement activities ensure engagement of appropriate health experts.</p>	<p>PR1 requires the identification of environmental and social issues and impacts relevant to the project. The studies required can include health assessments and the scope of the studies is reviewed to identify if and when independent experts are required.</p> <p>In preparing guidance material, we will be mindful of the roles of clients, consultants, and relevant local authorities. We encourage clients to communicate with relevant authorities so that they can also learn from the ESIA process and be involved as appropriate.</p>
334.	PR1	Emergency Response	<p>Any emergency preparedness and response plan developed should consider linkages with national public health emergency response plans.</p> <p>The International Health Regulations are a good anchor for this. The</p>	These issues are considered and evaluated during due diligence.

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			IHR is a legally binding international health agreement that has been signed by 194 Member States. Signatories are required to establish core capacities for preparedness and response to public health events of international concern, including chemical and radiological events. These capacities must also be in place at all points of entry, including ports and air ports.	
335.	PR1	Funding conditions	Both the current and draft policy state that the EBRD may refrain from financing a proposed project on environmental or social grounds. However, the current draft deletes an explanation that one example of when the EBRD may refrain from financing is “when a proposed project fails to address environmental and social issues in a satisfactory way and cannot be expected to meet the requirements set out in the applicable PRs [Performance Requirements] of this Policy over a time frame considered reasonable by the Bank, or where residual impacts remain unacceptable.” Such language should be reintroduced and strengthened.	The proposed amendment clarifies the issue. It is a non-sequitur that if a Project cannot meet the Performance Requirements then it shall not receive funding.
336.	PR1	Environmental and social studies	Who does the evaluation of E&S impacts? The Company, independent experts? Independent/international experts who are typically engaged to do the ESIA work often lack specific knowledge of local cultural issues, languages, customs of IPs etc. How does the Bank take this into account?	The Project proponent has a responsibility to provide appropriate documentation to the Bank for the Bank to appraise the Project. Independent, third party input is required for the gathering and review of the data supplied to the Bank as appropriate to the scale and risk associated with the Project.
337.	PR1	ESIA Para 7	<b>(vi) PR1 Page 13, Paragraph 7: Environmental and Social Assessments</b> This section should specifically include compliance with labour and OHS laws and regulations and <b>good international industry practice</b> , <i>defined as the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances, globally or regionally.</i> Also: <b>Environmental and Social management Systems Paragraph 13</b> should require the use of recognised Occupational Safety and Health Management Systems (e.g. ILO Guidance on Occupational Safety and Health Management Systems 2001 or OHSAS 18001).	The revised text has deliberately reduced the number of definitions and references to specific standards as such standards and definitions change over time and cannot be considered as exhaustive in terms of a definition.
338.	PR1	Cumulative Impact	Positive that <b>cumulative impact assessment</b> has been introduced, but it is unclear when and how it applies and is done in practice. (note: there was confusion about the concept of cumulative assessment and associated facilities and operations)	The text had been amended in light of comments received on cumulative impacts.
339.	PR1	Cumulative Impact	Where do you draw the line, which potential future developments are included in the cumulative impact assessment?	Foreseeable developments are included in cumulative impact assessments.

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340.	PR1	Cumulative Impacts	If EBRD is asked to finance a small HPP; does the Bank look at the cumulative impacts related to other HPP schemes that may be located in the region/watershed?	Cumulative impacts are considered and evaluated where appropriate.
341.	PR1	Cumulative Impacts	EBRD should consider “triggers” for clients to do a cumulative impact assessment (e.g. all category A projects, where there are impacts to community health etc.).	The EU EIA Directive provides the basis of a requirement for cumulative assessment. Therefore, all Category A Projects that undergo ESIA will be required to consider cumulative impacts.
342.	PR1	Boundaries /Cumulative Impacts	EBRD needs to develop guidance on the assessment of cumulative impacts and how project boundaries are defined.	Comprehensive guidance notes are not currently available.
343.	PR1	Boundaries	Scoping of project boundaries – we are supportive of language in PR1, paragraph 9; however, there are too many caveats (to the extent possible, where possible, where appropriate etc.).	The text had been amended in light of comments received on cumulative impacts.
344.	PR1	Regional Impacts	Some countries are very lignite dependent which can have regional impacts that go beyond project level impacts. What lens does EBRD take when appraising projects (local, national, regional)?	The Bank will review Projects on a scale that is appropriate to the areas/regions/populations that will be impacted.
345.	PR1	Third Parties	Third party obligations – it is not clear whether the PRs apply to third parties. Please clarify.	Third parties are not subject to the PRs unless they are part of the Project, e.g. construction contractors.
346.	PR1	Supply Chain	Paragraph 21—define what you mean by “primary suppliers”.	Wholesalers or retailers who sell/supply directly to the Project or the entity being described.
347.	PR1	Para 21 Supply Chain	Please define and clarify applicability to construction and operations phases of a Project.	The Policy applies to all phases of a Project, from design through construction, operation and closure/restoration.
348.	PR1	Para 7	<p>Point of clarification – Should the Environmental and Social Assessment Process cover all elements of the PRs? i.e. is the expectation that this assessment process will comprise a suite of different types of assessment/appraisal processes to cover all the PRs, of which one might be an impact assessment? How much detail needed on results of other studies, eg OHS and Product Safety, within the ESIA Report itself? Please clarify the scope and intent of the assessment suites... separate studies/deliverables, or somehow all within the ESIA?</p> <p>Please clarify – associated facilities are no longer assessed as part of the Impact Assessment process, but risks to the Project related to associated facilities should be assessed as part of the broader Assessment process? Please clarify what should be included in the scope of the IMPACT assessment, as opposed to assessed on a risk basis through other mechanisms.</p>	ESIA should include evaluation of all relevant PRs. Determination of applicability should form part of the ESIA scoping process.

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			Does the existence of the associated facility also need to be dependent on the Project?	
349.	PR1	Independence of Assessor	<ul style="list-style-type: none"> <li>It is not clear when an ESIA is required and whether a third party specialist is expected to undertake it or whether it would be acceptable for this to be conducted internally.</li> <li>Clarify trigger for an Environmental and Social Impact Assessment and whether such an assessment can be done internally, or always by a third party?</li> </ul>	The Bank shall make a determination on whether an ESIA is required via the categorisation process. Third party preparation of the ESIA documentation may be required.
350.	PR1	Hydropower sector	<p>The hydropower issue should be mentioned in the ESP, in particular in PR 1. [We] believe that any EBRD project in this area should undergo a comprehensive Environmental and Social Impact Assessment (“ESIA”) and an assessment according to the Hydropower Sustainability Assessment Protocol (HSAP). This approach will assure that better environmental options and all precautionary measures will be identified and addressed. This is even more essential given that environmental and social regulations significantly vary across the region.</p> <p>As a minimum, the ESP should explicitly refer to the EBRD Energy Sector Strategy that commits to follow the International Hydropower Association's Sustainability Guidelines and the recommendations of the World Commission on Dams:</p> <p>“The Bank will continue to require all hydropower projects to comply with local legislation, EU legislation and good international practice. In defining good international practice the Bank refers to a range of industry, trade or other widely accepted standards and guidelines, including the International Hydropower Association's Sustainability Guidelines and the recommendations of the World Commission on Dams” (EBRD Energy Sector Strategy p 50).</p>	The Bank’s Environmental and Social Policy applies to all industrial sectors into which the Bank invests. Therefore, we do not make sector specific comments or raise sector specific requirements within the ESP. As stated, the Bank’s Energy Strategy provides clarity on the issue of which standards apply to hydropower projects and this will apply to all such projects. There is no need for a repetition in the ESP.
351.	PR1	Corporate Finance	Clarify how you assess projects that are often included under these loan structures?	Corporate finance shall be assessed via the criteria outlined in paragraph 12.
352.	PR1	Para 9	<p>While this paragraph is important, it should be clear that there may be significant social or environmental impacts not considered to be directly part of the project that are still under control of the client. In other words, this evaluation and mitigation is not only applicable to third parties. We therefore suggest the following changes:</p> <p>The environmental and social assessment process will also identify and characterise, to the extent appropriate, potentially significant environmental and social issues associated with activities, facilities or other aspects which are not part of the project, but which may be</p>	We do not think these proposed changes would clarify the draft.

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			<p>influenced by the project or which may affect the project's ability to meet the PRs. These activities or facilities may be essential for the viability of the project, but are <b>and could be</b> carried out by, or belong to, third parties. <b>Where</b> the client cannot control or influence these activities or facilities to meet the PRs, the environmental and social assessment process should identify the corresponding risks they present to the project. Where potentially significant adverse environmental and/or social risks are identified, the client should collaborate with those relevant third parties to manage and mitigate these risks and help the project meet the PRs, <b>including by collaborating with relevant third parties where necessary</b>. Similarly, where there are opportunities to enhance benefits, the client should exercise its leverage and influence on third parties. Additionally, the assessment process will consider cumulative impacts of the project in combination with impacts from other relevant past, present and reasonably foreseeable developments as well as unplanned but predictable activities enabled by the project that may occur later or at a different location.</p>	
353.	PR1	Para 12	<p><b>Performance Requirement 1, Paragraph 12</b>  This paragraph should not be used or viewed as a loophole to avoid the relevant PRs. Further, general corporate finance will inevitably affect site-specific locations. Therefore, this paragraph should make clear that the client still needs to meet the PRs, including at specific sites. We suggest the following edits:  In cases where clients with multi-site operations are seeking general corporate finance, working capital or equity financing, the assessment outlined in paragraphs 7 to 11 may not be appropriate if the project does not relate to a clearly defined project. In such cases, the client will commission independent specialists to conduct a corporate audit of the client's current ESMS and the company's past and current performance against the applicable PRs and develop and implement an ESAP at the corporate level (as opposed to the site-specific level). <b>However, this does not in any way relieve the client from meeting the PRs, including at the site-specific level.</b>  The audit will:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> assess the client's ability to manage and address all relevant social and environmental impacts and issues associated with its operations and facilities against the requirements described in the PRs;</li> <li><input type="checkbox"/> assess the client's compliance record with applicable environmental and social regulatory requirements applicable in the jurisdictions in which the project operates, and;</li> <li><input type="checkbox"/> identify the client's main stakeholder groups and current stakeholder</li> </ul>	We do not think these proposed changes would clarify the draft.

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			<p>engagement activities.;</p> <p><input type="checkbox"/> <b>ensure that the ESAP enables timely compliance with all relevant PRs.</b></p> <p>The exact scope of the corporate audit will be determined on a case-by-case basis. <b>However, EBRD will reject general corporate finance for clients who are unable to display a sufficient ability to manage and address all relevant social and environmental issues associated with its operation and facilities against the requirements described in the PRs no later than by the conclusion of the financing.</b></p>	
354.	PR1	Para 23 Monitoring	<p>Timely monitoring is key to ensure compliance with the PRs and for the EBRD to fulfil the goals of the ESP. We are concerned that the time frame for monitoring is missing entirely, and that the first bullet point could be interpreted too broadly and result in noncompliance. Therefore, we suggest the following change:</p> <p>... Monitoring <b>will be timely (at least bi-annually) and</b> will address:</p> <p><input type="checkbox"/> Any significant <b>relevant</b> environmental and social impacts and issues identified during the environmental and social assessment process;</p>	Monitoring requirements vary from Project to Project but as a minimum, all Projects supply Annual Reports. The Bank has a standard template for such reporting which covers standard EHSS issues but also requires updating on all agreed mitigation actions designed to bring the Project into compliance with the PRs.
355.	PR1	Monitoring Projects	PCM is a reactive mechanism. Can the Bank be more proactive (people on the ground doing inspection work)?	The Bank actively monitors all Projects through review of the data required from all Projects on at least an annual basis; site visits by Bank staff; and site visits by Independent Monitoring Consultants.
356.	PR1	Monitoring	The draft ESP hardly mentions M&E mechanisms that could measure positive and negative gender effects. The ESP must require employing M&E tools such as sex-disaggregated baseline indicators to identify gender disparities at the project outset as a basis for monitoring progress during implementation and outcomes at project completion. EBRD's Strategic Gender Initiative must also be used to develop a gender framework to which clients must adhere.	The Policy includes the requirement to monitor social impacts and these by the definition included would include gender if appropriate. Further guidance is to be provided in a guidance note.
357.	PR1	Late stage projects	PR1 needs to include something that addresses very old projects that come to Bank as "priority projects" but which have been actually been in the planning stages for years and years.	All Projects, no matter what stage of development, are required to meet the Performance Requirements. Where necessary, for example with resettlement programmes which have been completed prior to the Bank's involvement, issues are reviewed against the PRs and if remedial actions are required to bring the Project into compliance with the PRs, then those actions will require to be implemented and/or be included in the ESAP.
358.	PR1	Para 25 Reporting	The timing of reporting requirements should be clearer than "regular reports." Further, the content and extent of the reporting should be clarified. We suggest the following change: The client will provide regular reports, <b>at least bi-annually</b> , to EBRD on the environmental and social performance of the project, including compliance with the PRs and implementation of the ESMS, ESMP, ESAP and Stakeholder	The Bank requires Annual Environmental and Social Reports from all projects as a minimum. This reporting includes updates on ESAP implementation and the supply of key EHSS data for the Bank's review. The use of the term 'regular' addresses the issue where the Bank requires reporting on a more frequent basis than annually.

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			Engagement Plan where appropriate. <b>The reports will at least include data on quantitative and qualitative metrics for relevant standards.</b> Based on the monitoring results the client will identify and reflect any necessary corrective and preventive actions in an amended ESMP or ESAP. The client will implement agreed corrective and preventive actions, and follow up on these actions to ensure their effectiveness.	
	<b>PR2</b>			
359.	PR2	Objectives	Shouldn't the first objective of PR2 be that rights of workers be respected?	We have included a first bullet: "Respect and protect the rights of workers".
360.	PR2	Terminology	<p>In paragraph 4 of Performance Requirement 2, the text of the first sentence reads as follows: "Throughout this PR, the term "workers" is used to refer to the employees of the client, including part-time, temporary, seasonal, and migrant workers."</p> <p>[We] would like to remind the EBRD that in some EU countries and other countries around the world, referring to/classifying an individual as an "employee" or providing an individual with "employment" constitutes a legal obligation to furnish that individual with a life-long position – i.e., potentially for decades (excluding retirement). Conversely, referring to/classifying an individual as a "worker" or providing an individual with "work" does not convey a legally-binding long-duration engagement obligation. Therefore, the EBRD needs to be very careful and purposeful when using the words "employee(s)", "employment", "worker(s)" and "work" in the context of labour in Performance Requirement 2 (and elsewhere in the Environmental and Social Policy and the Performance Requirements); it is also inappropriate and unacceptable to combine the words "employee" and "worker" to invent the term "non-employee worker(s)" (see paragraphs 4 and 18-20 of Performance Requirement 2 {and paragraph 8 of Performance Requirement 4}).</p> <p>Throughout the Environmental and Social Policy and the Performance Requirements, [we] recommend that the EBRD adhere to the following labour "hierarchy" in view of legal implications:</p> <ol style="list-style-type: none"> <li>1. Employees of a client/project proponent (i.e., typically few in number)</li> <li>2. Workers engaged <u>directly</u> by a client/project proponent to undertake specified project-related work for a defined period of time (i.e., variable in number – from zero to a few to many thousands; variable in length of engagement – from hours to many years)</li> <li>3. Workers engaged by a client/project proponent through a third party contractor/intermediary/service to undertake specified</li> </ol>	<p>ILO defines the universal notion of employment relationship as "a legal link between a person, called the 'employee' (frequently referred to as 'the worker') with another person, called the 'employer', to whom she or he provides labour or services under certain conditions in return for remuneration."</p> <p>We have reviewed the PR for consistency and the term 'worker' is used consistently throughout the PR.</p> <p>We are retaining the use of 'employment' or 'employment relationship' and 'employer'. We feel that the terms proposed in this comment do not reflect accepted nomenclature, nor to they adequately reflect the rights and responsibilities contained in the employment relationship (for both employers and workers) that this PR aims to protect.</p>



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			<p>project-related work for a defined period of time (i.e., variable in number – from zero to a few to many thousands; variable in length of engagement – from hours to many years) {i.e., workers <u>indirectly</u> engaged by a client/project proponent}</p> <p>In view of the discussion above, the text of the first sentence of paragraph 4 of Performance Requirement 2 needs to be revised to read as follows: “Throughout this PR, the term “workers” is used to refer to those individuals engaged directly or indirectly by the client to perform specified work for a defined period of time - this includes part-time, temporary, seasonal, and migrant workers.” Also, the second sentence of paragraph 4 needs to be reworded as follows: “The applicability of the PR to workers engaged either directly or indirectly by a client is set out in paragraph 21.” {Note: The reference to paragraph 21 may be incorrect.}</p> <p>[We] also take exception to the term “third party employer(s)”; it should be replaced in paragraph 19 of PR2 by a term such as “third party providers of workers” or “third party providers of labour”. In summary, in most instances in the text of Performance Requirement 2 (and in Paragraph 8 of Performance Requirement 4), the term “worker” should be used (and not “employee”), the term “work” should be used (and not “employment”), the term “non-employee worker” must never be used (instead a term such as “indirectly engaged worker” should be used) and “third party providers of workers (or labour)” should be used instead of “third party employers”.</p>	
361.	PR2	Terminology	<p>We recommend further clarity on critical labour-related terminology. Throughout this PR, the term “workers” is used to refer to the “employees of the client, including part-time, temporary, seasonal and migrant workers”. We would like to remind the EBRD that in some EU countries and other countries around the world, referring to/classifying an individual as an “employee” or providing an individual with “employment” conveys particular legal obligations. Conversely, referring to/classifying an individual as a “worker” or providing an individual with “work” does not convey such legally-binding obligations. Therefore, the EBRD needs to be very careful and purposeful when using the words “employee(s)”, “employment”, “worker(s)” and “work” in the context of labour in Performance Requirement 2 (and elsewhere in the Environmental and Social Policy and the Performance Requirements); it is also inappropriate to combine the words “employee” and “worker” to invent the term “non-employee worker(s)” (see paragraphs 4 and 18-20 of Performance Requirement 2</p>	See response given above.

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			{and paragraph 8 of Performance Requirement 4}).	
362.	PR2	Objectives	The current text (paragraph 2) states that the first objective of PR 2 on Labour and Working Conditions is to “Promote the fair treatment, non-discrimination, and equal opportunity of workers”. These terms are not consistent with ILO language and are difficult to define in the context of labour conditions and relations. The EBRD should delete this phrase and replace it with “ <i>Protect workers’ rights</i> ”. It may be noted that African Development Bank (AfDB) has adopted this language for the first objective of its Operational Safeguard 5: Labour Conditions, Health and Safety (OS 5), approved in December 2013.	We have included a first bullet: “Respect and protect the rights of workers”.
363.	PR2	Management of Worker Relationships	Paragraph 5: In order to better ensure that its policies contribute to development we suggest that the language in PR 2 be revised to support work being conducted by persons in a regular employment relationship and to not engage work using disguised employment relationship or excessive use of temporary work. Moreover there should be an obligation for clients to take due diligence to ensure that work through business relationships is performed within appropriate institutional and legal framework and that work is not performed on an informal basis where workers do not have access to legal protection or social protection. Guidance as to the circumstances in which work should be performed in a regular employment relationship can be found in the list of indicators set forth in ILO Recommendation 198 of 2006. In addition, the expression “At a minimum” at the beginning of the last sentence weakens the preceding two sentences, namely the provisions referring to national law and requiring that human resources policies are accessible and understandable. The words “ <i>At a minimum</i> ” should be deleted.	We believe this is partly covered in the PR with reference to national labour laws and international standards, including ILO core conventions, and all the requirements pertaining to a <i>formal</i> employment relationship (with HR policies and procedures, clearly documented and communicated terms of employment, etc.). We have also included a new bullet under objectives to “Respect and protect the rights of workers” and the reference to “promote decent work” has been reintroduced in paragraph 3. Excessive use of short- or fixed-term contracts can be addressed partly by provisions on non-discrimination but it would be difficult to establish a single standard for what constitutes excessive use of said contracts. EU member states are covered by Council Directive 99/70/EC of 28 June 1999.  The sentence starting with “At a minimum...” has been deleted.
364.	PR2	Footnote 3 paragraph 10	The inclusion of the last sentence “ <i>Women and children are particularly vulnerable to trafficking practices</i> ” could be erroneously interpreted as signifying that the prohibition of trafficked persons in Paragraph 10 applies only or especially to members of vulnerable groups. Employment of all trafficked persons must be prohibited, whether or not they are members of particularly vulnerable groups. A comment of this nature on the most vulnerable groups belongs in guidance notes for the implementation of PR 2, not in the requirement itself. This phrase should therefore be deleted from Footnote 3.	We have omitted this sentence.
365.	PR2	Gender	PR2, which addresses Labor and Working Conditions mentions gender generally along with race, disability, etc. It requires clients to promote fair treatment and equal opportunity of workers broadly. It specifies	The PRs are meant to be concise but the suggested specifications will be included in the updated guidance note.

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			avoidance of forced and child labor. Although the draft ESP claims to adhere to eight ILO conventions, it fails to highlight where these conventions discuss gender issues. It should, for example, flag relevant gender language promoting women’s rights and empowerment in the Equal Remuneration Convention ( <a href="#">No. 100</a> ); Discrimination (Employment and Occupation) Convention ( <a href="#">No. 111</a> ); Workers with Family Responsibilities Convention ( <a href="#">No. 156</a> ); and Maternity Protection Convention ( <a href="#">No. 183</a> ). Applying these conventions’ gender stipulations could help clients consider differential treatment of women and men.	
366.	PR2	Worker Organisations	Paragraph 12 The IFC in its Performance Standard 2: Labour and Working Conditions (PS 2) begins the requirements on workers’ organisations with a positive statement: <i>“In countries where national law recognizes workers’ rights to form and to join workers’ organisations of their choice without interference and to bargain collectively, the client will comply with national law.”</i> It would be helpful if the EBRD could include this positive statement before going on to describe circumstances in countries which restrict freedom of association. Furthermore, we recommend that the last two sentences of Paragraph 12, “Where national law substantially restricts ... of the client”, be deleted and replaced by the following sentence: <i>“With respect to situations where national law restricts the exercise of the human rights to form or join workers’ organisations (trade unions), the client will not do anything that would have the effect of discouraging workers from exercising their human rights and will respect the right of workers to bargain collectively by not refusing any genuine opportunity to bargain collectively in good faith.</i> For a fuller explanation, see “The UN Guiding Principles on Business and Human Rights and the human rights of workers to form or join trade unions and to bargain collectively”.	The current PR2 wording and the required compliance with ILO core conventions 87 and 98 adequately address the right of workers with regards to workers organisations and any modification in the paragraph would only serve to add emphasis to certain aspects of these rights.
367.	PR2	New Paragraph on Wages, benefits, conditions of work	PR 2 should require clients to identify migrant workers and ensure equal treatment with non-migrant workers, as the IFC did in its PS 2, Paragraph 11 (January 2102 version). EBRD should add a new paragraph 14 that reads as follows: <i>“The client will identify migrant workers and ensure that they are engaged on substantially equivalent terms and conditions to non-migrant workers carrying out similar work.”</i>	This has been included as suggested.
368.	PR2	Move of OHS to PR4	<b>The shift to PR 4 is problematic:</b> We appreciate the good intentions in moving the Occupational Health and Safety requirements from PR2 Labour and Working Conditions to new PR4 Health and Safety, previously PR4 Community Health, Safety and Security. The desire is	We have had various suggestions for the location of OHS requirements—such as putting them back in PR2 or keeping it in PR4 with other health and safety requirements. Clients and consultants have generally preferred the logic of a Health and Safety PR, as was demonstrated in the client survey. We note that

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			<p>to highlight the importance of Occupational Health and Safety, including requirements to protect the general public and the surrounding community. The problem with the proposed formulation is that, rather than highlight OSH requirements, there is actually a loss of emphasis, clarity and content. Occupational Health and Safety has a clear legislative and regulatory framework of rights and responsibilities that fall very clearly in the area of Labour and Working Conditions. This area is regulated and enforced by Ministries of Labour. It is unhelpful to confuse these rights and responsibilities by mixing up community, consumer and occupational requirements as proposed. The little that remains in the proposed new text on Occupational Health and Safety is wholly insufficient. The aim must be to give clear policy and practice requirements to the client. Contractors, consultants and workers will all appreciate clear requirements that follow the internationally-recognised standards and the well established hierarchy of control measures, as spelled out in the 2008 version of the ESP. It is clearly understood that the EBRD places great importance on preventing deaths, injuries and ill health caused by bad working conditions as a legal requirement and an ethical obligation. Poor OSH performance is probably the most serious, relevant and widespread project risk for the EBRD, with far too many preventable fatal and serious injuries occurring on EBRD-financed projects each year. There is, therefore, a need to give clear requirements to clients, to highlight their responsibilities for prevention and control measures and H&amp;S management systems. It is also important to require reporting in order to analyse performance on OHS and to identify improvements that should be made. Workers' rights to representation on OHS are key to smooth industrial relations and underpin any credible occupational safety and health management system. Such rights are also embodied in all EU and ILO Standards on OHS.</p> <p>In the interests of <b>harmonisation</b>, it is very important to consider that the <b>IFC</b> has, in their 2012 review, maintained OSH requirements in PR2 Labour and Working Conditions, and PR4 addresses Community Health, Safety and Security. It is desirable to align the EBRD's approach to environmental and social sustainability with the IFC Performance Standards and Guidance as far as is practicable, taking into account differences in their client countries.</p> <p><b>a) It is advisable to maintain occupational Health and Safety in PR2.</b></p> <p>In order to fulfil the intention of giving greater emphasis and clarity to</p>	<p>Direct Clients are subject to PRs 1-8, 10, so the requirements in both PR2 and PR4 apply; this is more a structural issue of which makes the information more accessible primarily to the clients that must understand and apply the requirements and to the consultants that assist them. We would like to try the structure of PR4. This will be reviewed again in 5 years, and are open to changing if it does not prove advantageous.</p> <p>In terms of the content of the OHS requirements, we have gone through and increased the level of detail on OHS in PR4 and made sure nothing was lost in the transition, and we believe the requirements are now clearer. Any further detail that is deemed necessary will be addressed in the form of a guidance note.</p>

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			this important area, PR 2 should be re-named “ <i>PR 2 Labour, Working Conditions and Occupational Health and Safety</i> ”. It may be added that the AfDB’s new Occupational Safeguard 5: Labour Conditions, Health and Safety follows this practice, and in discussions for adopting its new safeguards policy, the World Bank’s working concept is “Labor and Occupational Health and Safety”. (PR 4 should revert to previous title “ <i>Community Health, Safety and Security</i> ” and references to OHS should be removed, other than to point out that occupational health and safety is addressed in PR 2.)	
369.	PR2		[We] would like to better understand the rationale for combining occupational health and safety (OHS) with community health and safety into one Performance Requirement (PR4). While we recognize that this may appear to be a more holistic approach to health and safety, we would stress that OHS is quite different from general public health and safety. Among other issues, there are very different legal and regulatory frameworks and compliance mechanisms involved, which might lead to confusion.	
370.	PR2	Decent work	In the Bank’s overview of the proposed key changes, it is stated that the ESP and PRs have been streamlined by removing generic, non-committal and/or aspirational statements and explanatory text. We regret that all references to “decent work” were eliminated, including in PR2 on Labour and Working Conditions. Decent work is indeed an aspirational concept, but also one that the European Commission and many EBRD members have fully adopted in their policies and development cooperation.	Wording has now been reinserted into PR2 to reflect the fact that the Bank would like its clients to be guided by these principles.
371.	PR2	Workers’ Freedom of movement	<b>(xiii) PR 2 Page 21, Paragraph 15</b> There should be no restriction on workers’ freedom of association and freedom of movement as regards movement to and from employer-provided accommodation. The addition of the word “unduly” before “restricted” is subject to broad interpretation and potential abuse. The word “ <i>unduly</i> ” should therefore be deleted.	Freedom of association was removed from this paragraph as it is covered under Workers Organisations. With regard to the term “unduly,” there are circumstances where restrictions of workers’ movement are necessary due to impact on community health and safety or services. For example, if a large temporary construction workforce uses local public transport, depriving the local community of the service, the client would be expected to restrict workers’ use of public transport and provide alternative transport, so the community would not be significantly disadvantaged.
372.	PR2		<b>Page 33, paragraph 1:</b> a specific reference to the promotion of social dialogue could be inserted, as follows: “By treating workers fairly, providing them with safe and healthy working conditions and promoting social dialogue, clients may create tangible benefits, such as enhancement of the efficiency and productivity of their operations.”	We have tried to remove aspirational statements from the text and focus on specific requirements.

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373.	PR2	PR2 Objectives	<b>Page 33, paragraph 2</b> under “Objectives”: the notion of a “sound worker-management relationship” may be complemented upfront by specific references to freedom of association and the right to collective bargaining.	A first bullet was added: “Respect and protect the rights of workers;”
374.	PR2	Child Labour	<b>Page 33, paragraph 2:</b> we note the text that was added to the revision: “Avoid the use of forced labour and child labour (as defined by the ILO).”  A better formulation would be “ <u>Prevent</u> the use of forced labour and child labour (as defined by the ILO).” This would be consistent with the requirement to conduct on-going impact analysis/risk assessment, detailed on page 34.	The word “avoid” was replaced by “prevent.”
375.	PR2	Child Labour	<b>Page 34, paragraph 9</b> under “Child Labour”: We recommend keeping the opening sentence that was cut in the revision and revising the section as follows to align it better with the ILO Child Labour Conventions 138 and 182:  <i>Child labour</i> The client will comply with all relevant national laws provisions or international child labour standards, <u>whichever provide a higher degree of protection</u> , related to the employment of minors.  The client will not employ children <u>below the minimum age for entry into employment (normally 15 years of age) or before the school leaving age for compulsory education, if it is higher than the minimum age. The client will not employ any person under 18 years of age in work that is likely to jeopardize the child’s health, safety or morals (hazardous work).</u> All work of persons under the age of 18 shall be subject to an appropriate risk assessment and regular monitoring of <u>health and safety</u> and working conditions, including hours of work.	The reference to ‘relevant national laws’ in the opening sentence has been reintroduced.
376.	PR2	Non-discrimination	<b>Page 35, paragraph 12</b> under “Non-Discrimination and Equal Opportunity”: We suggest specific references could be made to “national extraction, political opinion and affiliation to a union” as additional prohibited grounds of discrimination.	<ul style="list-style-type: none"> <li>• We are concerned that the differences between ‘nationality’ &amp; the proposed ‘national extraction’ will not be clear, particularly when translated into multiple languages.</li> <li>• Political opinion’ is covered by ‘belief’</li> <li>• ‘Union affiliation’ is covered under Workers’ Organisations</li> </ul>
377.	PR2	Equal pay	<b>Page 36, paragraph 14</b> under “Wages, benefits and conditions of work”: We recommend a specific reference to “equal remuneration for men and women for work of equal value”.	“Equal remuneration” is covered in most national laws but often not applied in practice. It would be difficult to assess our projects against this requirement. However, work is done by EBRD to promote equal opportunities.

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378.	PR2	Retrenchment	<p><b>Page 37, paragraph 17</b> (beginning line 8): We suggest the following revision:</p> <p>Without prejudice to more stringent provisions in national law, consultation will involve reasonable notice of employment changes to <u>unions concerned, where they exist, and to workers, their representatives</u> and relevant public authorities, so that the retrenchment plan may be examined jointly in order to reduce and mitigate adverse effects of job losses on the workers concerned.</p>	This has been changed as per the suggestion
379.	PR2	Supply Chains	<p><b>Page 38, paragraphs 22-24</b> under “Supply Chain”</p> <p>It is important that the Supply Chain section is brought into alignment with the UN Guiding Principles on Business and Human Rights. An impact assessment should be done, but it should not be restricted to only suppliers over which the client has control (a very subjective judgement in any case). The client should seek to understand any negative human rights impacts it causes or contributes to, regardless of where it occurs in the supply chain.</p> <p>With reference to <b>paragraph 23 (i)</b> on child labour, we suggest:</p> <p>If child labour is detected, good faith efforts should be made to remediate or mitigate the problem. If the client does not have sufficient leverage, it should seek to increase its leverage to address the problem.</p>	We agree with the comment and have made further changes to the text. In the meantime, the key limitation “where the client can reasonably exercise control over its primary suppliers” has been removed.
380.	PR2	Grievance Mechanism	<p><b>Page 21, Paragraph 17: Grievance Mechanism</b> As explained in the comments above concerning the need to revise PR 2 in conformity with the <i>UN Guiding Principles on Business and Human Rights</i>, the phrase at the end of the paragraph, “substitute for grievance mechanism provided through collective agreement”, should be replaced by “<i>not be used to undermine the role of legitimate trade unions</i>”.</p>	We believe that the statement “nor should it substitute for grievance mechanisms provided through trade unions or collective agreements” adequately covers this.
381.	PR2	Non-Employee Workers	<p><b>Page 22, Paragraph 19: Non-Employee Workers</b></p> <p>Clients must be obliged to incorporate the requirement of PR 2 in contracts with third-party or sub-contracted employers. The inclusion of a “reasonable efforts” qualifier gives leeway to avoid the requirements through sub-contracting and is subject to broad interpretation and potential abuse. It may be noted that the AfDB’s OS 5, Paragraph 22 does not include any such qualifier and makes it obligatory that contracts with third parties include compliance with the Bank’s labour requirements. The words “<i>use reasonable efforts to</i>” should be deleted from the paragraph.</p>	<p>This paragraph covers a wide range of possible contractual relationships between EBRD clients and contractors. There will be situations where it may not always be commercially or practically feasible to undertake full-fledged assessments and impose excessive requirements on contractors.</p> <p>It remains EBRD’s prerogative to ascertain whether “reasonable efforts” have indeed been undertaken.</p>

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382.	PR2	Supply Chain workforce protection	<ul style="list-style-type: none"> <li>More specific guidance on OHS expectations for the supply chain included in PS 2</li> <li>See numerous comments under PR4 also related to PR2</li> </ul>	Paragraph 24 states that "Additionally, where significant safety issues are identified among primary supply chain workers, the client will introduce procedures and mitigation measures to ensure that relevant suppliers are taking steps to prevent or correct life-threatening situations."
383.	PR2	Supply Chain	<p><b>Page 22, Paragraph 21: Supply Chain</b> The requirement that clients must assess whether child labour and forced labour are present in the primary supply chain should be obligatory. By requiring assessments only where "the client can reasonably exercise control over its primary suppliers", the proposed language of Paragraph 21 potentially renders the subsequent Paragraph 23 null and void.</p> <p>Paragraph 23 specifies how the client must address the presence of child labour, forced labour or dangerous working conditions in the supply chain, and states that where the client cannot exercise control or influence over primary suppliers, it will shift to suppliers that comply with PR 2. It is difficult to see how this paragraph can be applied if the previous Paragraph 21 exempts the client from even assessing the presence of forced and child labour if the client is deemed unable to exercise control over its primary suppliers.</p> <p>The words "<i>where the client can reasonably exercise control over its primary suppliers</i>" should be deleted from Paragraph 21.</p>	The limitation established by "where the client can reasonably exercise control over its primary suppliers" has been removed.
384.	PR2	Para 21	[We] note that Paragraph 21 uses the concept of "leverage" or "control" instead of the tests of "caused, contribute or linked" set out in the <i>UN Guiding Principles</i> .	The limitation established by "where the client can reasonably exercise control over its primary suppliers" has been removed.
385.	PR2	Paras 1 and 2	<p>In paragraphs 1 and 2 there are references to safe and healthy working conditions and to the safety and health of workers; and also in paragraph 14 on page 21, which does include a cross reference to PR4.</p> <p>For clarity a cross reference to PR4 should be given in paragraph 1, now that it includes workers as well as Community health and safety:</p> <p>"By treating workers fairly and providing them with safe and healthy working conditions (as outlined in PR4), clients may ..."</p> <p>This would be in line with paragraph 7 on page 28 which refers to PR 3 and PR2.</p>	Cross references have been included.
386.	PR2	Para 6	<b>Page 27 – paragraph 6</b> It is good to note the explicit reference that requirements of PR 4 are "part of the environmental and social assessment process", as this has not always been clear previously. It could be made clearer by also being included in the introduction.	All PRs are part of the environmental and social assessment process.



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			Similarly it is good to see this in the reference to Environmental and Social Management System (“ESMS”) and/or the project’s Environmental and Social Management Plan (“ESMP”). Include the explicit reference that requirements of PR 4 are “part of the environmental and social assessment process/Management System/Management Plan”, earlier on in the document, particularly in PR1	
387.	PR2	Retrenchment	In paragraph 16 of Performance Requirement 2, it is suggested that there is an alternative to retrenchment (of project workers). It is important to recognize that for a project’s (short-duration) construction phase, thousands of individuals (the vast majority being directly and/or indirectly engaged “workers”) can be required, but in the subsequent operations phase, only a few hundred individuals (a mix of “employees” and “workers”) may need to be retained – therefore, there is no viable alternative to (large scale) retrenchment in most project scenarios – this is reality. Consequently the first two sentences of paragraph 16 should be replaced with the following sentence: “Prior to implementing any collective dismissals in connection with a project, the client will develop and implement a retrenchment plan to assess, reduce and mitigate the effects of retrenchment on workers, in line with national law and good international industry practice and based on the principles of non-discrimination and consultation.”	<p>We believe that the qualification contained in the following covers the situation described in this comment.</p> <p>“If the analysis does not identify viable alternatives to retrenchment, the client will develop and implement a retrenchment plan»</p>
388.	PR2	EU Standards	Are [EU] decent work standards included in EBRD’s PRs?	<p>The reference to “decent work” has been reintroduced in PR2.</p> <p>The PR covers the key areas included in what is considered to be the ‘decent work agenda’ but do not require compliance with all labour-related EU Directives. There is no single EU standard in this regard but a series of standards, laws and regulations that are mainly based on ILO conventions. A joint EU-ILO report on decent work states that “The rights and principles enshrined in many ILO conventions are also protected by the EU charter of Fundamental rights. Some are protected by non-discrimination legislation covering employment, equal opportunities for men and women, health and safety at work and the working conditions of seafarers. The EU increasingly participates in the adoption of new international labour standards and supports the application of such standards.”</p>
389.	PR2	Accommodation	Paragraph 15. What do you mean that “Freedom of Workers’ movements should not be “unduly restricted”? Why is the word “unduly” in there? What does it mean?	See response 370.
390.	PR2	Accommodation	We welcome the EBRD/IFC guidance note on accommodation. It doesn’t deal with a particular issue. When workers live in accommodation, for 10 years, for example, and then have to be resettled—will this fall under PR5 as resettlement or not, because it was company accommodations?	Depending on the situation, both PR2 and PR5 may be applicable (e.g. retrenchment clauses in PR2). It is likely that provisions under PR5 would also come into play, but these are usually triggered by land-acquisition, so the causes of the resettlement would need to be established first.

	Ref.	Issue	Comment	Management Response
	PR3			
391.	PR3	Terminology	<p><b>“Technically and Financially Feasible” and “Cost-Effective” (Environmental and Social Risk Management) Measures and Alternatives</b></p> <p>In paragraph 6 of Performance Requirement 3, it is correctly stated that environmental and social risk management measures need to be technically and financially feasible and cost-effective. Instead of appearing for the first time in paragraph 6, this critical statement/qualifier should appear in the very first paragraph of the Introduction section of this PR, and this statement should be repeated in full (i.e., technically and financially feasible and cost-effective) numerous times throughout the text of this PR. Furthermore, when reference is made to “best available techniques” (see paragraph 2) and “alternatives” (see paragraph 19), the requirement for technical and financial feasibility and cost-effectiveness should also be clearly stated. Similarly, in Performance Requirement 4, paragraph 29, “technically and economically feasible road safety components” also need to be “cost-effective”.</p>	We have included this in the requirements section of the various PRs, rather than in the introduction sections.
392.	PR3	Assessment of impacts	<p>[We have seen examples of the Bank being willing to invest in highly polluting industries in] an already extremely polluted and densely populated industrial zone where its inhabitants suffer from air and water pollution. This project expansion is expected to raise the level of pollution further, not to mention the forced evictions, despite the Environment and Social Impact Assessment’s claim that modern equipment used in the implementation of the project will not cause pollution. <b>We urge the Bank to include in its finalized ESP items that are clear over ceasing funding on projects that are associated with infringement to environmental and social rights as they adversely impact the wellbeing of people in areas of operation.</b></p>	All Bank financed projects must meet applicable EU substantive environmental standards. In addition, language around social/human rights has been strengthened in the ESP (EBRD’s commitments) and PR1 (client requirements).
393.	PR3	Climate	Can you please elaborate on the Bank’s commitments on climate safeguards in PR3?	In addition to the general commitments in the Policy and requirements throughout the PRs, specific requirements are addressed under section Greenhouse Gases in paragraphs 13 and 14 of PR3.
394.	PR3	EU Standards	PR3 specifies that all projects should follow EU and BAT (where relevant)? Is this possible? This is a very high benchmark.	We recognize that this is a high goal to set; however, EBRD and our clients have successfully demonstrated this commitment since 2003 (even in non-EU member states); if the requirements cannot be met, this is brought to the Board of Directors’ attention and included in the information for the public.
395.	PR3	Standards	<p><b>EBRD policy finance for retrofitting must include use of best available techniques</b> The EBRD could play an important role in the retrofit of existing power plants to EU environmental standards. As the need for financing for retrofit measures is expected to be very high the EBRD should scrutinize the suitability of retrofit projects by assessing</p>	All EBRD projects are structured to meet EU environmental standards over time, even retrofit projects.

	Ref.	Issue	Comment	Management Response
			their application of the various performance requirements. Projects should only be accepted if the retrofit undertaken results in the application of best available techniques for pollution abatement. Furthermore only projects that fulfil the performance requirements in other fields than pollution prevention should be given priority and especially compliance with PR1 and PR4 should be a prerequisite.	
396.	PR3	Industry Standards	Paragraph 17 refers to benchmarking water use to industry standards. Will there be a guidance note that gives industry standards and what are good benchmarks?	A number of Guidance Notes will be drafted. The request for guidance note on water use is noted.
397.	PR3	Pollution prevention and control	<p>“9. (...) Where EU Environmental Requirements applicable at project level do not exist, the client <b><u>and the Bank</u></b> will identify other applicable environmental standards in accordance with GIP – <b><u>in this regard, minimum standards should be established by the Bank.</u></b>”</p> <p><b>[Our] expectations are now that the EBRD clarifies and strengthens the references to EU directives, clearly stating which ones will be applied.</b></p> <p><b>Instead, we note with high concern that many of these references have been deleted</b> and application of EU law is left to the discretion of the EBRD on a case-by-case basis, e.g. by conditioning it with “where appropriate”, “where applicable” and “subject to” etc. <b>The strongest formulation is in PR 3 that requires that EU law will be applied if more stringent than national law.</b> For [us] it is essential that the EBRD clearly states that it will push forward best available practices in the region of operations, and regardless of the ‘environmental and social regulatory requirements applicable in the jurisdictions in which the project operates’ the EBRD will apply EU regulations, if they are more stringent than in the jurisdictions in which the project operates. <b>Requiring that EU law will be applied if more stringent than national law is the approach that [we] expect the EBRD to take for all Performances Requirements.</b> Alternatively, it could be made explicit as a cross-cutting unconditional commitment in the part of the policy on the EBRD's application of EU law and standards.</p>	Noted - this commitment is already included in PR3 and we have tried to make the language clear.
398.	PR3	Climate Change	This is ambitious regarding CO2 emissions. We would prefer to see a new section dedicated to Climate. It should have CO2 reduction targets for all sectors.	EBRD recognises that this represents an ambitious target; however we have taken the decision to align EBRD with our Multilateral Financial Institutions (MFI) peers, including the IFC who have had these targets since 2012.
399.	PR3	Carbon Accounting Methodology	Carbon accounting methodology should be clear on how baseline conditions are defined, especially if you are financing an old facility that is being brought back on line? What is the true baseline?	This is covered in EBRD’s existing GHG Accounting methodology.

	Ref.	Issue	Comment	Management Response
400.	PR3	Greenhouse gases	Paragraph 13. This paragraph suggests that the environmental and social assessment process should include the consideration of alternatives and the implementation of feasible options to minimise greenhouse gas (GHG) emissions. <b><u>However, it does not specify how such projects would be implemented in countries which are not signatories of the Kyoto Protocol and are not committed to the reduction of GHG emissions.</u></b>	The Kyoto Protocol specifies country level commitments. EBRD's PRs are project level requirements for our clients.
401.	PR3	Carbon reporting	Paragraph 14. <b>We would suggest</b> replacing 25,000 tonnes with <b><u>15,000 tonnes</u></b> .	We have chosen 25,000 tonnes to align ourselves with other international financial institutions (IFIs).
402.	PR3	Carbon targets	The EBRD adopts in its new draft ESP a refined comprehensive body of Performance Requirements (PRs) that clients are expected to meet if their projects are to be funded by the Bank. In PR3 on 'Resource Efficiency and Pollution Prevention and Control', the Bank claims that "in all the activities directly related to the project, the client will avoid or minimize the use of hazardous substances and materials, and... where avoidance is not feasible, the client will consider the safety of their uses." Furthermore, the Bank ensures that its "client's environmental and social assessment process will consider alternatives... to avoid or minimize project-related greenhouse gases (GHG) emissions during the design and operation of the project." Only the EBRD does not show any commitment to avoid financing projects that (i) require usage of hazardous materials that may carry detrimental effects on human health and the environment; and/or (i) cause pollution or increase GHG emissions. In this regard, <b>the Bank is requested to improve PR 3 in the final ESP draft by committing its clients to specific quantitative CO2 reduction targets for absolute emissions cuts. Moreover, the Bank is requested to cease funding all projects that require using hazardous substances and materials.</b>	Noted. EBRD feels that the new CO2 limits for our clients and requirements for the use, transport, storage and disposal of hazardous materials represents good international practice and is consistent with the commitments of our IFI peers.
403.	PR3	Hazardous materials	The Bank claims that "in all the activities directly related to the project, the client will avoid or minimize the use of hazardous substances and materials, and... where avoidance is not feasible, the client will consider the safety of their uses ( <a href="http://www.ebrd.com/downloads/research/policies/esp-draft.pdf">http://www.ebrd.com/downloads/research/policies/esp-draft.pdf</a> ; p. 26)." Furthermore, the Bank ensures that its "client's environmental and social assessment process will consider alternatives... to avoid or minimize project-related greenhouse gases (GHG) emissions during the design and operation of the project (Ibid; p.25)." Only the EBRD does not show any commitment to avoid projects that (i) require usage of hazardous materials that may carry detrimental effects on human health	Noted. EBRD feels that the new CO2 limits for our clients and requirements for the use, transport, storage and disposal of hazardous materials represents good international practice and is consistent with the commitments of our IFI peers.

	Ref.	Issue	Comment	Management Response
			and the environment; and/or (i) cause pollution or increase GHG emissions. In this regard, <b>the Bank is requested to improve PR 3 in the final ESP draft by committing its clients to specific quantitative CO2 reduction targets for absolute emissions cuts. Moreover, the Bank is requested to cease funding all projects that require using hazardous substances and materials.</b>	
404.	PR3	Hazardous Materials	<p>The PR(s) should include a requirement to disclose information about all hazardous materials/substances associated with the project to national health authorities and to national poison centre (if available):</p> <p>An additional disclosure requirement should be included in either PR3, PR4, or PR10 or all which ensures that information about hazardous materials used or generated as waste from project activities is made available/accessible to national poison centres or the equivalent, as feasible, and in accordance with national regulations.</p> <p>The rationale for the above is to ensure that health care providers that might have to respond to chemical incidents associated with industrial accidents are aware of the substances they are dealing with. It does not imply any obligation on the part of the project proponent to build health sector capacity to respond to industrial accidents. It just ensure that the health sector can access information needed to ensure an effective response.</p> <p>This could for instance fall under Item 11 of PR4, if the wording were expanded along the lines of the following: <i>“the client will provide workers and affected communities, and local entities/agencies (public and private) providing them health and other social services, with relevant information....”</i></p> <p>If the health sector community is aware of potential chemical risks, they will also be in a better position to address associated community concerns and perceptions of risk.</p>	This disclosure of this type of information is typically covered under national law and included in the Company’s EHSMS (covered in PR1). Accordingly, we do not feel that additional requirements are needed in PR3.
405.	PR3	Exposure to pollutants	<p>Exposure to pollutants, whether chemical, radiological or biological – is a critical “environmental determinant of health”. Therefore in any cases where pollution (be it in the air, water, soil or other media) is identified as a potential project risk, health needs to be considered.</p> <p>Perceptions of risk (e.g. of exposure to pollution) are an important driver of individual, community, and household stress.</p>	Agreed – this forms the basis of all good ESIAs and is covered in PR1

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406.	PR3	Hazardous materials	In PR3, clients are required to avoid the use of hazardous substances; however, PR3 does not seem to prohibit the use of hazardous substances. We'd like to see "no finance" commitments specific to hazardous substances.	EBRD financed projects must meet all national law and relevant EU requirements.
407.	PR3	Water	<p>"15. Clients must seek to minimise the project's water <b>use and its impact on freshwater ecosystem dynamics and functioning</b>, and in situations where a project specific water supply needs to be developed, the client will seek to utilise water for technical purposes that is not fit for human consumption, where feasible."</p> <p>"16. All reasonable opportunities for water <b>use</b> minimisation, reuse, <b>and recycling and maintenance of ecological flow are to be taken</b> in accordance with GIP must be evaluated as part of the project design."</p> <p>[We note that] water infrastructure such as dams, dykes or groins change water flow dynamics and can consequently have negative impact on biodiversity and ecosystem services (e.g. nutrient retention). These impacts should be assessed, avoided, and mitigated.</p>	This is not the best section to discuss ecological flows. This is better addressed in PR6.
408.	PR3	Water Resources	Paragraph 17. <b>We would suggest</b> replacing 5,000 m3/day with <b><u>3,000 m3/day</u></b>	We are comfortable with 5,000 m3/day. Our benchmarking demonstrates that this is consistent with large water intensive projects.
409.	PR3	Water Resources	How does the Bank treat water resources within its projects? Water is a very topical issue for Central Asia.	Impacts to water resources are addressed in PRs 1, 3 and 6
410.	PR3	Integrated Resource Management	Integrated Resource Management (e.g. coastal zone management) requires an integrated approach to E&S safeguards /management. This approach does not seem to be clearly articulated or balanced in the PRs.	ESIA by its very nature takes an integrated approach to impact assessment and management. This is covered in PR1. Impacts to ecosystems and the biodiversity they support are covered in PR6
411.	PR3	Resource Efficiency	What is EBRD's approach / role in promoting resource efficiency?	See PR3 and EBRD's Energy Strategy
412.	PR3	Resource Efficiency	<b>Resource Efficiency.</b> Most non-EU countries...do not carry out assessments of the resource efficiency of projects involving the use of natural resources, based on cost-benefit analysis. Benefits are quoted in units of currency, while damage is not quantified at all. The expected damage to the environment and human health should be quantified and taken into account, using an equivalence factor which could be compared with an assessment of the impact of socioeconomic measures. This would make the Bank's policy in this area visible and accountable.	<p>Noted. This is sometimes addressed through national law.</p> <p>EBRD requires its clients to follow the mitigation hierarchy. Specifically, clients should avoid any adverse impacts instead of calculating environmental damage in units of currency and then pay compensation.</p>

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413.	PR3	Resource Efficiency	<p>We wish to comment on the resource efficiency aspects of EBRD's agribusiness investments in intensive livestock farming. This kind of industrial livestock production is dependent on feeding substantial quantities of cereals and soy to animals. For example, around 60% of EU cereal production is used as animal feed (Westhoek et al, 2011). Feeding cereals and soy to animals is inefficient as much of their food value is lost during conversion from plant to animal matter. Using cereals and soy as animal feed is a wasteful use not just of these crops but of the scarce land, water and fossil fuel energy used to grow them. The UK Government's Foresight report stresses that, per calorie, grain-fed meat requires considerably more resources to produce than other food items (UK Government Office for Science, 2011).</p> <p><b>Environment and Biodiversity.</b> Already we see that the EU imports around 33 million tonnes of soy from South America per year (European Commission, 2010). Almost all is used for animal feed. The production of soy for animal feed is a key factor driving deforestation in South America which entails massive biodiversity loss (World Bank, 2009). The growing demand for feed crops is also leading to an expansion of the land used for feed crop production. This pushes small farmers and pastoralists into forest and marginal lands. Deforestation results in biodiversity loss and substantial CO2 emissions. Moreover, increased use of marginal land can lead to overgrazing and in arid areas to eventual desertification. The European Environment Agency has concluded that "Biodiversity in agro-ecosystems is under considerable pressure as a result of intensified farming" (European Environment Agency, 2010). The contribution of livestock farming to the present global loss of biodiversity is estimated by a Dutch study to be around 30% (Westhoek et al, 2011). <b>The EBRD should therefore include impacts on biodiversity loss, not just on the site of any proposed livestock unit, but on the lands from where the livestock feed is sourced.</b></p> <p><b>Nitrogen use and impacts.</b> Intensive livestock farming is associated with excessive amounts of reactive nitrogen in the environment due primarily to use of synthetic fertilizers. Plants, however, only absorb about 50% of the nitrogen fertiliser applied to them. The concentrate feed given to industrially reared animals also contains high levels of nitrogen. Pigs assimilate just 30% and broiler chickens 45% of the nitrogen in their feed; the rest is excreted in their manure (Steinfeld et al, 2006). The unabsorbed nitrogen is washed into rivers and lakes and leaches from the soil into groundwater, contaminating sources of</p>	<p>Agreed – PR6 has being revised to address impacts to biodiversity as a result of agribusiness activities.</p> <p>Water conservation and management requirements have been strengthened in PR3 and are applicable to all water intensive sector including agribusiness</p>

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			<p>drinking water and damaging aquatic and wetland ecosystems. The European Nitrogen Assessment 2011 (ENA) states that 75% of industrial production of reactive nitrogen (Nr) in Europe is used for fertiliser. It stresses that the primary use of Nr in crops is not directly to feed people but to feed livestock. The ENA states that “Human use of livestock in Europe, and the consequent need for large amounts of animal feed, is therefore the dominant human driver altering the nitrogen cycle in Europe”. The ENA identifies five key threats associated with excess Nr in the environment: damage to water quality, air quality, soil quality, the greenhouse balance, and ecosystems and biodiversity. This situation is likely to be mirrored in countries in which EBRD may make agribusiness investments (Sutton et al (Eds), 2011).</p> <p>The UN World Economic and Social Survey 2011 states that “Intensive livestock production is probably the largest sector-specific source of water pollution” (UN, 2011). <b>The EBRD should assess carefully the impact of nitrogen in assessing the environmental impact of any proposed livestock project.</b></p> <p><b><u>Climate Change and GHGs.</u></b> The clearing of forests or savannah to grow animal feed or for cattle rearing releases huge amounts of stored carbon into the atmosphere, thereby contributing to climate change. The UN Food and Agriculture Organisation (FAO) estimates that such land-use change is responsible for 34% of livestock-related greenhouse gas (GHG) emissions (Steinfeld et al, 2006). Industrial animal production is often a major contributor to these GHG emissions due to its substantial imports of soy for animal feed.</p> <p><b><u>Water Use.</u></b> Water scarcity is a growing global problem. In view of the impact of irrigation for feed crops we believe <b>EBRD should calculate the amount of water, including virtual water, in animal feed which any livestock project may use and, if necessary, take special measures to reduce the water consumption of the project.</b></p> <p><b><u>Wasted calories in a hungry world.</u></b> Research shows that several kilos of cereals are needed to produce 1 kg of edible meat (Trostle, 2008). The nutritional value consumed by animals in eating a given quantity of cereals is much greater than that delivered for humans by the resultant meat. One study reports that for every 100 calories that we feed to animals in the form of crops, we receive on average just 30</p>	



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			<p>calories in the form of meat and milk (Lundqvist et al, 2008). A report by the UN Environment Programme (UNEP) shows that the world's total edible crop harvest could supply 4,600 kcal per person per day. Much is lost in post-harvest loss or household/ processing waste. However a further 1,700 kcal is used as animal feed. The resultant meat and dairy products only provide 500 kcal for human consumption. In effect, therefore 1,200 kcal (26%) is lost in the poor return achieved by feeding human-edible crops to farm animals (Nellemann et al, 2009). This is surely a clear example of <u>resource Inefficiency</u>. The UN Environment Programme has calculated that the cereals that are expected to be fed to livestock by 2050 could, if they were instead used to feed people directly, provide the necessary food energy for 3.6 billion people (Nellemann et al, 2009).</p> <p><b>Conclusion. We believe that the EBRD should reject agribusiness proposals which are going to be dependent on large-scale feeding of cereals and soy (often imported from environmentally challenged areas) to livestock.</b> We believe that this would be a way to meet the stated aims of PR3: <i>Therefore, resource efficiency and pollution prevention and control are essential elements of environmental and social sustainability and projects must meet good international practices ("GIP") in this regard.</i></p>	
414.	PR3	Resource efficiency	<p>[We] welcome the clear language in this PR requiring that EU law will be applied if more stringent than national law. This would be the approach [we] would recommend as an overall, unconditional commitment in the part of the policy on the EBRD's application of EU law and standards. [We] welcome the introduction of an obligation to consider the potential cumulative impacts of water abstraction upon third party users and local ecosystems placed on the EBRD's client by the Bank. [We] also welcome the introduction of the principle that the client <i>"will consider alternatives and implement technically and financially feasible and cost-effective options to avoid or minimise project-related greenhouse gases ("GHG") emissions during the design and operation of the project. These options may include, but are not limited to, alternative project locations, adoption of renewable or low carbon energy sources, sustainable agricultural, forestry and livestock management practices, the reduction of fugitive emissions and the reduction of gas flaring"</i>. What [we] understand by this is that, if the technically and financially feasible and cost-effective options to avoid or minimise project-related GHG emissions are more expensive than the adoption of renewable or low carbon energy alternatives, the Bank will not engage in financing such a project and in fact will be</p>	<p>Thank you for your recommendation. Baseline methodologies are covered in EBRD's GHG emissions accounting methodology and PR1.</p> <p>Including language that commits the Bank to only finance projects "whose emissions trajectories are consistent with global emissions reductions of 50-70 percent by 2050" is not realistic, as EBRD cannot enforce country level commitments.</p>

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			<p>open to analyse studies showing that other cost competitive renewables-based or low carbon alternatives options exist before approving a fossil fuels based project. In order to ensure a thorough comparison of alternatives, it must be made clearer that the baseline being used for the calculation of the greenhouse gas comparison will be the most environmentally acceptable alternative, not merely the status quo, which in most cases can anyway not legally or technically continue for a long period.</p> <p><b>Recommendation:</b> In paragraph 14, we propose the following amendments (additions in bold): “<i>For projects that currently produce, or are expected to produce post-investment, more than 25,000 tonnes of CO2-equivalent annually, the client will quantify these emissions in accordance with [the] EBRD Methodology for Assessment of Greenhouse Gas Emissions. The scope of GHG assessment shall include all direct emissions from the facilities, activities and operations that are part of the project or system, as well as indirect emissions associated with the production of energy used by the project and/or the use of the project. In order to be able to compare emissions with other alternatives, a baseline scenario must be developed based on the most environmentally, economically and socially sustainable alternative to the project, including potential for energy efficiency. Quantification of GHG emissions will be conducted by the client annually in accordance with the EBRD Methodology for Assessment of Greenhouse Gas Emissions. The EBRD will finance only projects whose emissions trajectories are consistent with global emissions reductions of 50-70 percent by 2050</i>”.</p>	
415.	PR3	Resource Efficiency SEA	Water scarcity in [our country] is a real issue. Does the EBRD encourage and/or carry out strategic environmental assessments in advance of direct project investments?	On a case by case basis only, and normally on the request of the State/Competent Authorities.
416.	PR3	Promoting Opportunities	We welcome the fact that EBRD supports energy efficiency projects, which is clearly outlined in the ESP. Additional information on how EBRD promotes this in its COO in PR3 would further strengthen the ESP.	Thank you – we often include these types of opportunities in our country /sector strategies.
417.	PR3	Promoting Opportunities	It is difficult to understand how EBRD promotes clean air production. Could this be included in PR3?	These types of commitments are covered in the Bank’s country and energy strategies.
	<b>PR4</b>			
418.	PR4	General	It is good to note the new scope of PR4 which includes the health and safety of workers as well as the community.	Noted

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419.	PR4	Scope	Currently the focus on health issues in PR4 mainly addresses communicable diseases and a handful of other issues such as injuries and accidents (linked to road safety, site safety, natural hazards), the threat of violence (linked with the use of security personnel), and issues associated with exposure to hazardous substances. There are many additional health issues of particular relevance to EBRD portfolio countries that are not addressed, including issues to do with community stress and well-being, and use of alcohol and smoking. It may well be that these issues are too difficult to address explicitly in the wording for PR4. But, what you could do is beef up the language in item 17 of PR4 so that any health assessments undertaken look at the full range of relevant health issues. For example something along the lines of “ <i>as part of the ESIA process, consideration of community health issues should include consideration of both communicable and non-communicable diseases as well as potential impacts on health determinants</i> ”.	Para 17 requires all risks and community health impacts to be identified and evaluated. The scope of such assessment will be defined on a case by case basis as outlined in PR1 para. 7-12. If there are any relevant health determinants these will also be considered.
420.	PR4	Occupational Health	Access to health care is an important determinant of health. The need to provide health care services to migrant workers that lack “portable” health insurance is problematic for local health care facilities.  These facilities need to have access to a cost recovery mechanism in the event that workers require supplemental health services not otherwise available on the project site.	For occupational related and non-occupational related injuries and diseases where migrant workers seek national health service assistance the client should provide adequate insurance coverage. This point will be discussed internally.
421.	PR4	Structure	Combining worker and community H&S issues (and consumers) in PR4 is a bit confusing, mixes receptors and it is unclear how worker H&S should be assessed in an Impact Assessment in terms of rating of impacts rather than a risk based approach. Also, the means of engagement with workers (mostly temp during construction phase) is different than with community and consumers. Will be challenging to explain differences between PR2 and PR4 to practitioners and clients. [Recommend you] move all worker H&S issues back into PR 2 to enable worker issues to be assessed together more holistically as part of the assessment process rather than within the Impact Assessment.	EBRD was requested to give a higher profile to health and safety generally, and to have a stand-alone PR on health and safety to make it clear that in addition to environmental and social issues, H&S was a key issue. This was requested by both clients and consultants. Engagement with workers is foreseen in PR2.
422.	PR4	Terminology	<b>“Non-Employee Workers”</b> See the comments above regarding this topic in Performance Requirement 2.	To be covered under PR2.
423.	PR4	Natural hazards	Natural hazards – add tsunamis and earthquakes in the list of examples of potential hazards.	We have tried to avoid long lists of examples, but a reference has been made to earthquakes.
424.	PR4	Assessment of Health Impacts	Clients are required to address potential health impacts to communities as part of the appraisal process (PR4). However, stand-alone HIAs are rarely done and are often superficial. How does the revised ESP	Scope of environmental and social assessments are covered under PR1.

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			improve and/or strengthen the Bank's commitments in this regard?	
425.	PR4	Assessment of Health Impacts	<p><b>EBRD future projects must include health in cost-benefit assessments</b></p> <p><b>[We] advocate that the full health costs (including effects outside the project area and trans-boundary effects) and benefits are taken into account in a mandatory cost-benefit analysis for all of the EBRD's future projects (to be added as a general commitment of reducing environmental health risks under section B and in the performance requirement 1).</b> Such a cost-benefit analysis must include also alternatives to the proposed project. Stakeholders have to be informed of the results of the cost-benefit analysis in an appropriate way, and health experts as well as health affected groups and population groups at high risk (for air pollution women, children and older people) need to be adequately informed and consulted. In the case that impact assessment has already been undertaken locally by host country authorities the responsibility of the bank should be to ensure that this impact assessment covered also the full external health costs of the project. If this is not the case, the Bank should undertake a separate assessment.</p>	<p>Para 17 requires the scope of the community health impact assessment to be commensurate and proportional to the potential impacts. Where significant community health impacts are identified, EBRD would require such impacts to be mitigated. In that respect, cost implications of such mitigation measures will also be considered during the assessment.</p> <p>Stakeholder engagement and disclosure requirements are covered under PR10.</p>
426.	PR4	Building certification	The USA requires that all state funded buildings are to be certified to sustainability codes (e.g. LEAD certified). It would good if EBRD would consider a similar approach.	EBRD will encourage certification for sustainability codes but will not require certification.
427.	PR4	Para 25	Should this paragraph also mention that products will also meet environmental and product standards for the market of "prime" destination?	Addressed
428.	PR4	Road Safety	Road Safety issues are not just issues related to transport projects only. e.g. companies often use public roads or their private roads pass near public lands. EBRD needs to address this issue as part of its project due diligence/appraisal	This issue is addressed under para.28.
429.	PR4	Traffic and Road Safety	I recognise why this issue has been flagged but should a section referencing all forms of transport (Rail, Aviation, Shipping) also be included? If not here but elsewhere?	Traffic and road safety is a major concern for all EBRD projects. Other means of transport do not pose high risk for clients.
430.	PR4	EU Standards	We would welcome guidance on which health and safety requirements you consider to be key—there are many.	Guidance notes will be prepared on key health and safety issues.

	Ref.	Issue	Comment	Management Response
431.	PR4	Health Impacts	<p>The environment is an important determinant of health and has strong links to important chronic diseases such as respiratory and cardiovascular diseases as well as cancers, which are among the leading causes of death but also coming with a huge burden of ill-health and associated health costs for the countries in question. Climate change is already responsible for excess deaths as well as ill-health in Europe and is described by the World Health Organization as the biggest challenge for public health in the 21st century. Outdoor air pollution has been identified as a major risk factor, in fact leading the list of environmental risk factors in Western Europe.<sup>1</sup> Women, children and older people are especially affected by air pollution due to a higher susceptibility, as well as specific health risks of air pollution for the developing organs of foetuses and children. The World Health Organization estimates that in the European Region (encompassing 53 countries) outdoor air pollution shortens the average life expectancy by almost one year. The European Commission estimates the deaths attributable to particulate matter pollution in the EU alone to be 400,000 people per year. In addition, air pollution is in many cases an important contributor to health inequalities.</p> <p>The major air pollutants derive from largely the same processes as greenhouse gases, linked to the combustion of fossil fuels. Climate change is furthermore expected to exacerbate bad air quality through an increase in temperature and sunshine hours.<sup>4</sup> In order to tackle the double burden that is currently put on people's health in Europe ambitious reductions both in greenhouse gas emissions and in air pollution are needed.</p> <p>Strong synergies can result from the reduction of both groups of pollutants at the same time, as reduced costs for pollution abatement are linked to climate policies. At the same time huge co-benefits for health are the result of low-emission development pathways. Health costs can be saved, which means relief for countries struggling with budgetary deficits and ineffective health care systems but also reduced expenditures, especially for middle and low income households. On top of that, productivity increases as fewer people are required to stay sick at home or are impacted by chronic ailments or acute health effects during their working hours. As a healthy workforce is key for the economic development of a country, the prevention of chronic diseases and the reduction of the environmental burden of disease should be a priority of development policies</p>	Human health impact and control resulting from pollution is covered under PR3.

	Ref.	Issue	Comment	Management Response
432.	PR4	Supply Chain	What are the responsibilities towards the H&S of workers in the Supply chain? Recommend specific reference should be made to the applicability or otherwise of this PR in relation to the supply chain or cross reference back to PR 2- paragraph 23	We agree that the primary supply chains should have clear responsibilities related to OHS and shall discuss this topic internally.
433.	PR4	Miscellaneous Comments	<ol style="list-style-type: none"> <li>1. Assessing health and safety impacts on consumers does not fit well with assessing community and or workforce H&amp;S. Any requirements to assess impacts to consumers and product safety should be kept distinct to avoid confusion over what needs to be assessed and how ie methods used to asses both worker and community H&amp;S are not appropriate or transferable to consumer H&amp;S. Recommend: Distinguish sections related to consumers from the wider aims of this PR by making a specific objective around what is required in relation to consumers and taking any reference to consumers into a specific section where the types of Projects that have responsibilities to consumers are defined. If Projects develop shared infrastructure and services to what extent do these issues need to be considered?</li> <li>2. Confusion over receptors of impacts throughout the PR. Throughout this PR if worker and community H&amp;S issues are to remain combined, care needs to be taken to ensure that the relevant receptor is defined throughout</li> <li>3. Objectives para 1 If workers are going to be included here then need to address more than just working conditions – it also needs to take consideration of their living conditions where applicable. Rephrase to working and living , where applicable, conditions.</li> <li>4. Para 3 It is not only communities that can be affected by a Project’s direct and indirect impacts. Through this paragraph whenever communities are mentioned specific reference should also be made to workers.</li> <li>5. Para 6 Health and Safety are not explicitly mentioned in PR1 as such the relevance and interconnectedness of that PR with this PR is not clear. Include reference to health and safety in PR1 – make clear level of detail that should be provided regarding OHS risk assessment as part of the Assessment process</li> <li>6. Para 12 Does this only relate to workers or is it also relevant for communities? Make it clear if this is relevant for workers and communities. If it is relevant for communities how is the Project to determine if the Project has caused a disease?</li> <li>7. Para 15 Line 2 does not appear to make sense—Rephrase to clarify requirements.</li> <li>8. Para 16 Use of the term <i>sensitivities</i>. This term is not helpful in</li> </ol>	<ol style="list-style-type: none"> <li>1. PR4 is addressing H&amp;S safety impacts and issues on not only workers and communities but also consumers as defined under Para. 1.</li> <li>2. We went through the PR4 again to ensure receptors are defined throughout. Amendments have been made to para. 18, 20 and 23.</li> <li>3. Accommodation / living conditions for workers are addressed under PR2 para.15.</li> <li>4. We agree that workers can also be affected by projects. However, para 3 covers the issues that would be more specifically related to community health and safety. Hence. No change has been made.</li> <li>5. Reference to health and safety issues is included as part of the definition of “social”.</li> <li>6. The requirements covered under the title “General requirements” apply to all concerned under the PR4, i.e., workers, communities, and consumers as defined under para. 1.</li> <li>7. Noted and amended.</li> <li>8. Para 16 rephrased as per the suggestion.</li> <li>9. Disclosure requirements relevant to all PRs are covered under PR10.</li> <li>10. Para 20 amended as per the comment.</li> <li>11. Addressed under para 21.</li> <li>12. Traders are expected to comply with the applicable requirements of national law and with GIP as relevant.</li> <li>13. Covered under PR1.</li> </ol>

	Ref.	Issue	Comment	Management Response
			<p>this context. Rephrase to H&amp;S of workers in relation to their age.....</p> <p>9. Para 17 Deletion of Para 8 – the point raised here about disclosure of information is not as explicitly made elsewhere in the PR. The need to disclosure information should be added into/ made clearer in the General Requirements section (with signposting to other PRs if relevant/ appropriate)</p> <p>10. Para 20 Risk assessments should include consideration of workers, not just members of the Public .Add in considerations of workers/employees.</p> <p>11. Para 21-23 No mention is made regarding storage and handling of hazardous materials when such materials are required and can't be substituted. Include a section on the handling, storage etc of hazardous materials in line with GIIP.</p> <p>12. What responsibilities are expected of traders in relation to these paragraphs.</p> <p>13. It is also unclear what the trigger is for undertaking such an assessment and the level of detail required. This would also not sit comfortably in an Impact Assessment so would need to form part of the wider assessment package. Clarity required on these issues.</p>	
434.	PR4	Conventions	<p>Health and Safety (PR 4) sets up requirements and responsibilities for clients and workers not only to comply with legal obligations, but also to achieve certain standards to reduce risks beyond legal requirements. The OHS legal requirements cited are those of the EU which constitute a high standard. [We] suggest, however, an additional, complementary reference to relevant ILO occupational safety and health instruments: <b>Page 49, paragraph 13</b> under “Occupational Health and Safety”:</p> <p>The client will provide workers with a safe and healthy workplace, taking into account inherent risks in its particular sector and specific classes of hazards in the client’s work areas and relevant EU Occupational Health and Safety (“OHS”) standards<sup>1</sup>, <u>relevant ratified ILO Conventions and the ILO Guidelines on OSH Management Systems (ILO-OSH 2001)</u><sup>2</sup>.</p> <p>As a reference, we suggest an additional footnote (2) which lists the most significant among the ILO OSH Conventions, including:</p> <p>Convention No. 155 concerning Occupational Safety and Health and the Working Environment</p> <p>Convention No. 162 concerning Safety in the Use of Asbestos</p> <p>Convention No. 167 concerning Safety and Health in Construction</p> <p>Convention No. 170 concerning Safety in the Use of Chemicals at</p>	EBRD believes this level of detail would be best placed in guidance notes, which are planned during policy implementation.

	Ref.	Issue	Comment	Management Response
			<p>Work</p> <p>Convention No. 174 concerning the Prevention of Major Industrial Accidents</p> <p>Convention No. 176 concerning Safety and Health in Mines</p> <p>Convention No. 184 concerning Safety and Health in Agriculture</p> <p>Convention No. 187 concerning the Promotional Framework for Occupational Safety and Health</p>	
435.	PR4	Worker Risk	<p>The objectives set up in the PR reflect a policy based on prevention in line with ILO Convention No. 155 on Occupational Safety and Health and the Working Environment. They follow the Convention's hierarchy of risk prevention which aims to ensure that clients' projects are designed and implemented to capture emerging and unregulated hazards. However, we strongly advise to further strengthen this Requirement under the section on Occupational Health and Safety by including a reference (as per articles 13 and 19 of the C155) to the right and requirement of workers to report and remove themselves from a work situation when they have reasonable justification to believe that it represents a danger to their life or health. The right of a worker to remove himself or herself from a dangerous situation is a basic OSH principle and should be mentioned here.</p> <p>Article 13 states <i>"a worker who has removed himself from a work situation which he has justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences"</i>.</p>	This suggestion will be taken into account when we prepare more detailed guidance notes on the general requirements in PR4.
436.	PR4	Management Systems	<p>The implementation of a safety and health management system promotes a preventive safety and health culture in line with ILO Convention No. 187. PR4 would be strengthened by incorporating management systems approaches for systematic and continual improvements in OHS. ILO Guidelines on OHS Management Systems (ILO-OSH 2001) provide sound guidance for this. We notice that reference to maintaining an OSH management system (<b>page 37</b>) and ILO OSH 2001 (<b>formerly footnote 14</b>) were cut from PR2 and not reintroduced in the revised section.</p>	We have included the reference to OHS management systems in PR1 and 4. More detail will be provided in guidance notes.
437.	PR4	Editing suggestions	<p>There appears to be an inconsistency between <b>Paragraph 4 in page 47</b> and <b>Paragraphs 13-15 in page 49</b> in reference to the responsibilities of clients (employers) and workers for Occupational Health and Safety.</p> <p><b>Paragraph 4 of PR4 in page 47</b> of the Introduction seems to imply that clients and their workers share an equal responsibility for OHS. We would like to stress that, according to ILO Convention 155, the employer has the main responsibility to ensure a safe and healthy work</p>	We have amended the text to reflect these comments.



	Ref.	Issue	Comment	Management Response
			<p>environment. By contrast, Paragraphs 13-15 in page 49 clearly detail the responsibilities of the client in OSH and are in line with the requirements of C155.</p> <p>Article 16 of C155 reads as follows:</p> <ol style="list-style-type: none"> <li><i>1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.</i></li> <li><i>2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.</i></li> <li><i>3. Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.</i></li> </ol> <p>We therefore suggest that the text in <b>Paragraph 4</b> that currently reads: “This PR recognises that both the clients and their workers have the responsibility to look after health and safety at work.” be revised to: <u>“This PR recognises that the clients have the primary responsibility to look after health and safety at work, and that the workers should cooperate in the fulfilment by their employer of the obligations placed upon him/her”</u> (C155, Art19), and that the sentences that follow in the same paragraph be revised in line with the requirements of C155.</p>	
438.	PR4	Community Health	<p><b>In regions with poor air quality projects that will cause substantial air pollution should require special scrutiny</b> In order to protect the health of the local population, projects for which significant environmental health impacts can be expected and which are foreseen in a sensitive region, that is a region with poor air quality, should undergo special scrutiny regarding abatement options and alternatives. An extensive social and environmental impact assessment should be carried out, including a full weighing of health costs and benefits for different abatement techniques, and an extensive evaluation of alternatives to the proposed project. This includes especially the construction, conversion or transformation of thermal power plants or crude oil refineries, as well as smelting and chemical installations, waste incinerators and large transport infrastructure in a region where EU ambient air quality limit are being breached, or where there is the risk that they are not being met, as such projects are likely to have a negative effect on local and/or regional air quality.</p>	<p>Comment relates to PR3.</p> <p>Human health impact and control resulting from pollution is covered under PR3.</p>

	Ref.	Issue	Comment	Management Response
439.	PR4	OHS	The attempt to highlight safety and health in PR4 results in detracting from a focus on occupational health and safety. There was actually more on OHS in the previous policy in PR2.	EBRD was requested to give a higher profile to health and safety generally, and to have a stand-alone PR on health and safety to make it clear that in addition to environmental and social issues, H&S was a key issue. This was requested by both clients and consultants.  Engagement with workers is covered in PR2.
440.	PR4	OHS	<b>Monitoring worker's health should be compulsory</b> On PR4, [we] would like to raise the need for monitoring of workers health (including documenting rates of occupational illness and mortality) as a binding measure the project developer has to fulfil and report to the Bank. In addition, occupational health and safety officers should be employed and trained by the company, in an appropriate ratio to the number of workers. The project developer should have a compensation mechanism for occupational illness and mortality in place, or, in cases where the host country would bear the costs of compensation to the worker or his family, the bank must ensure that such a compensation scheme is in place and functioning nationally.	The Bank is aware that there a low and late rate of recognition of occupational diseases in its countries of operation and existing data may not accurately reflect reality. The Bank currently requests this data when clients submit their annual reports and we believe a risk based approach would be more beneficial.  With regard to safety officers, we appreciate some projects are different and placing a blanket figure may not be the best option as this could, in some instance, not be enough. Therefore we will continue to assess this on a project by project risk basis approach.
441.	PR4	OHS	<b>Proposed text as follows “Occupational Health and Safety</b> <i>14. The client will provide the workers with a safe and healthy work environment, taking into account inherent risks in its particular sector and specific classes of hazards in the client’s work areas, including physical, chemical, biological, and radiological hazards.</i> <i>15. The client will put in place measures to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work by minimising, so far as reasonably practicable, the causes of potential hazards to workers.</i> <i>16. In a manner consistent with good international industry practice, defined as the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances, globally or regionally, the client will take the following steps</i> <ul style="list-style-type: none"> <li>• <i>appoint a competent person to manage Occupational Health and Safety and to provide a project – specific health and safety plan</i></li> <li>• <i>identify potential hazards to workers, particularly those that may be life threatening</i></li> <li>• <i>provide preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances</i></li> <li>• <i>provide appropriate equipment to minimise risks, and</i></li> </ul>	The Bank agrees with most the information that the commentator has suggested, although we would rephrase certain areas to avoid terms like appropriate and competent – these are subjective. <ul style="list-style-type: none"> <li>• <i>appoint a competent person (subjective) to manage Occupational Health and Safety and to provide a project – specific health and safety plan</i></li> <li>• <i>identify potential hazards to workers, particularly those that may be life threatening (Agree)</i></li> <li>• <i>provide preventive and protective measures, including modification, substitution, or elimination of hazardous conditions or substances (Agree)</i></li> <li>• <i>provide appropriate (Subjective) equipment to minimise risks, and requiring and enforcing its use</i></li> <li>• <i>establish a workplace Health and Safety Committee, made up of representatives appointed by the client and elected representatives of the workers to assist with the management and promotion of health and safety at work (This should be if the workers decide and not compulsory)</i></li> <li>• <i>provide personal protective equipment at no cost to the workers (Agree)</i></li> <li>• <i>train workers to use and comply with health and safety procedures and protective equipment (Agree)</i></li> <li>• <i>document and report occupational accidents, diseases and incidents (Agree)</i></li> <li>• <i>establish emergency prevention, preparedness and response arrangements (Agree)</i></li> </ul>

	Ref.	Issue	Comment	Management Response
			<p><i>requiring and enforcing its use</i></p> <ul style="list-style-type: none"> <li>• <i>establish a workplace Health and Safety Committee, made up of representatives appointed by the client and elected representatives of the workers to assist with the management and promotion of health and safety at work</i></li> <li>• <i>provide personal protective equipment at no cost to the workers</i></li> <li>• <i>train workers to use and comply with health and safety procedures and protective equipment</i></li> <li>• <i>document and report occupational accidents, diseases and incidents</i></li> <li>• <i>establish emergency prevention, preparedness and response arrangements</i></li> <li>• <i>require similar policies and procedures in contractual agreements with third parties</i></li> </ul> <p><i>17. Projects will comply with relevant EU OHS requirements and ILO Standards on OHS and, where such requirements do not exist, relevant IFC OHS guidelines.</i></p> <p><i>18. To achieve the above requirements, the client will maintain an OHS management system appropriate to the size and nature of its business and in line with good international practice, such as ILO OSHMS 2001 Guidelines or OHSAS 18001.”</i></p>	<ul style="list-style-type: none"> <li>• <i>require similar policies and procedures in contractual agreements with third parties(Agree)</i></li> </ul>
442.	PR4	OHS	OHS has moved to PR4 from PR2; what is the reason for this?	Clients and consultants asked us to give a higher profile to health and safety, because many did not view it under either the term “environmental” or the term “social”. A dedicated health and safety PR was therefore created.
443.	PR4	OHS	Some of the most risky projects are existing facilities and there is not adequate information available on PR4 issues, such as accident rates on large infrastructure projects. There is also a low level of workers rights. Community safety is a concern—they experience the consequences of projects. You need more stringent and detailed requirements on health and safety so people will know what you require.	Projects are assessed on a case by case basis and specific requirements on OHS stipulated in legal agreements. In additions all project must be informed by the EU SEVESO requirements related to information provided to the public
444.	PR4	Para 13-16	There is too much space for the free will of clients without strong control from the Bank. Workers are often not allowed to report accidents—dis-encouraged from reporting when machines are not made safe. Practically every week someone is dying.	The Bank would be most concerned if deaths were occurring on Bank-funded projects without the knowledge of the Bank and would welcome evidence to support any such allegations in respect of our projects.

	Ref.	Issue	Comment	Management Response
445.	PR4	Reporting to public	We need more transparent and diligent reporting on issues like worker safety and community safety. We want reports regularly on high risk projects—like every 3, 4, 6 months—whatever is reasonable—but we currently get nothing.	The Bank is committed to ensuring projects follow good international practice and EU requirements. The Bank will require information to be made available where this is an EU / national requirements and it is of general public interest.
446.	PR4	OHS	Clients are not protecting the basics of occupational health and safety.	As above, the Bank would be most concerned if the basics of good OHS management were not occurring on Bank-funded projects without the knowledge of the Bank and would welcome evidence to support any such allegations in respect of our projects.
447.	PR4	OHS Accidents	The general notion of PR4 is good—but it has a weakness—there is no clear section to deal with Accident Prevention, Response, Monitoring, and Reporting of accidents. You need more clarity on the accidents that happen all of the time at projects. The main accident section now is on facility accidents—like Seveso. And you group community and worker accidents in a general statement—you need a specific section on worker accidents—they are the responsibility of the client and this ought to be more clear.	This is included in the PR4. In addition all accidents must be reported to the Bank under legal agreements. The timescales of such reporting is depending on the severity.
	<b>PR5</b>			
448.	PR5	General	The text of this Performance Requirement is very repetitive – the same statements appear time after time after time; the text of this PR could therefore be substantially streamlined by deleting redundant/repetitive passages. In this vein, paragraph 17 could be deleted in its entirety since it states the obvious.	We restructured, streamlined and amended the 2008 PR5 text to avoid repetitions. Paragraph 17 is the only paragraph in the PR that discusses the establishment of the cut-off point and thus cannot be deleted.
449.	PR5	Para 6	We agree with the statement that appears in the third bullet of paragraph 6 of Performance Requirement 5 – i.e., at a minimum, the livelihoods and standards of living of displaced persons need to be restored to pre-displacement levels, and where achievable, sustainable and cost-effective opportunities exist to improve these conditions, this should be the goal. However, in the last sentence of paragraph 31 in PR5, the stated requirement is improved living conditions for resettled individuals/households/ communities; i.e., this sentence is inconsistent with the earlier, correctly-articulated benchmark. We suggest the following wording: “New resettlement sites built for displaced persons will offer at a minimum pre-displacement living conditions, and where achievable, sustainable and cost-effective opportunities exist to improve these conditions, this should be the goal.”	The text revised as follows: “ <i>New resettlement sites built for displaced persons will offer at minimum pre-displacement living conditions, and where achievable, sustainable and cost-effective opportunities to improve these conditions.</i> ”
450.	PR5	Forced Evictions	We welcome the new phrasing that EBRD will not knowingly finance projects that require or result in forced evictions.	Noted. Please see also following two comments and responses regarding forced evictions.

	Ref.	Issue	Comment	Management Response
451.	PR5	Forced Evictions	<b>Only Partial Progress on Protection against Forced Evictions</b> The draft policy has a welcome new requirement that the Bank will not knowingly finance projects which either involve or result in evictions that are contrary to international human rights standards—the only firm human rights commitment contained in the draft. However, the term “knowingly” should be replaced with a commitment for the Bank to take every necessary step to become aware of potential forced evictions that may be a result of projects that it supports. Disappointingly, the draft continues to indicate that resettlement sites need comply with only one or more of the seven requirements of the right to adequate housing. Thus, for example, it would permit evicted people to be resettled in metal containers in areas without employment options provided that only one of the other criteria was met. International human rights standards require that resettlement fulfils all the criteria of the right to adequate housing: (a) Legal security of tenure, (b) Availability of services, materials, facilities and infrastructure; (c) Affordability, (d) Habitability, (e) Accessibility, (f) Safe location allowing access to employment options, health-care, schools, and other social facilities (g) Cultural adequacy.	Text revised as follows: “ <i>Adequate housing or shelter can be measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility, and locational characteristics. Adequate housing should allow access to employment options, markets, and basic infrastructure and services, such as water, electricity, sanitation, health-care, and education. Clients should include these aspects of adequate housing in order to offer improved living conditions at the resettlement site, particularly to those without recognisable legal right or claim to the land they occupy.</i> ”
452.	PR5	Forced Evictions	The draft policy does not prohibit Bank financing of a project where forced evictions have already taken place and there has been no attempt to establish a process to provide appropriate redress for victims. The EBRD should require clients to comply with the UN Basic Principles and Guidelines on Development-based Evictions and Displacement and the UN Guiding Principles on Internal Displacement. The policy removes an existing provision requiring legal assistance for displaced persons. At the London consultation, Bank staff indicated that this was not intentional. It is important that this provision is retained.	Paragraph 10 requires that where resettlement has already occurred, there has to be an assessment that identifies a) any gaps and b) corrective actions that may be required to ensure compliance with PR5. PR1 sets out the overall requirements for addressing human rights and PR5 requirements are guided by Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and UN Guiding Principles on Internal Displacement. The provision of legal assistance to displaced persons was mistakenly removed and is now reinstated.
453.	PR5	Resettlement Requirements	Paragraph 38. It is worrying that only one of the seven requirements related to adequate housing needs to be applied. So if people are resettled into metal containers, the current wording suggests that you then would not look at employment.	Text revised as follows: “ <i>Adequate housing or shelter can be measured by quality, safety, affordability, habitability, cultural appropriateness, accessibility, and locational characteristics. Adequate housing should allow access to employment options, markets, and basic infrastructure and services, such as water, electricity, sanitation, health-care, and education. Clients should include these aspects of adequate housing in order to offer improved living conditions at the resettlement site, particularly to those without recognisable legal right or claim to the land they occupy.</i> ”
454.	PR5	Guidance Notes	Resettlement: given the complexity of the issues, this topic requires more guidance; more detailed analysis and requirements for the client.	This is a complex topic indeed and we are working on developing guidance notes providing more details on how to implement PR5 requirements.

	Ref.	Issue	Comment	Management Response
455.	PR5	Social Determinants of Health	<p>Many associated issues are important “social determinants of health”. For example:</p> <ul style="list-style-type: none"> <li>- Loss of livelihoods can impact on income, food and nutrition security;</li> <li>- Can precipitate a positive or negative change in access to services, including health services as well as other services such as transport,</li> <li>- Community cohesion can change, particularly if there are perceptions of unequal distribution of risks and benefits as part of the resettlement and compensation process.</li> </ul> <p>Individual, household, community stress can result from the above</p>	Noted. Socio-economic assessment required by the PR5 should assess and provide relevant information in the specific project context. Livelihood, food security, access to services, community issues (including host community) are to be assessed and relevant mitigation measures designed in the respective action plan.
456.	PR5	Setting EBRD SPZs	EBRD should establish standards for obligatory resettlement so that communities don’t have to fight for resettlement and/or their associated rights. E.g. standards related to specific distances to project sites where people should be resettlement (e.g. SPZs) to avoid impacts to their health.	National legislation provides standards for specific industry SPZs. In cases where these standards do not exist, EBRD works with the client and/or respective governmental institutions to establish such zones based on good international practice.
457.	PR5	Cut off Dates	<p>PR 5, para 19: We wonder if it would be possible to add that the cut off date should not be established for example more than a year in advance of expected resettlement. If it is set more than that in advance, complications begin and it is nearly impossible to maintain clear census (eligibility) lists.</p> <p>PR 5, para 25: We assume that in the case of developing a Framework, a cut off date should not (and most often cannot) be established. This can only be done prior to developing a Resettlement Action Plan, which, in connection to the previous comment, maybe should also not be developed more than a year in advance of resettlement. If it is known that resettlement will happen two, three years down the line, even if the elements for developing a RAP exist, it might be better to require a Framework. Otherwise, the census as well as the assets inventory (and valuations) are likely to become outdated.</p>	<p>Noted. Paragraph 17 provides for “<i>the cut-off date for eligibility based on the applicable legislation and project timeline as appropriate</i>” in the absence of specific national government procedures. In our experience the timelines can vary and appropriate timeframes should be established based on the project context. We anticipate to provide more detailed information on this issue in the guidance notes.</p> <p>Noted. Thank you.</p>
458.	PR5	Cut-off Dates	Cut-off dates protect sponsors from influx. They do not protect the communities. This approach needs to be more flexible. Once the cut-off date is established, people cannot do anything on their land, to their house.	Cut-off dates also protect the communities from opportunistic encroachment. Please refer to next comment for the opposite point of view.
459.	PR5	Cut-off dates	<p>Paragraph 13 vs.17. <i>"From the earliest stages and through all resettlement activities the client will consult with affected persons and communities..."</i></p> <p>vs. <i>"Setting a cut-off date will discourage inflow of people who are</i></p>	Consultations with affected people are crucial for ensuring that resettlement processes, including compensation, are fair and there is, if possible, shared and agreed sense of responsibility.

	Ref.	Issue	Comment	Management Response
			<p><i>ineligible for compensation and assistance."</i></p> <p>Conducting early stage consultation about the resettlement area and assets CAN encourage urgent PAPs' activities in project area. For example, if PAP learns that the ... HPP dam, or highway... is planned to be constructed in his parcel, than s/he would probably hurry to plant expensive trees on the plot that hasn't been cultivated with ages, just to extract extra money from the project developer. So the idea of fairness and responsibility might flow away for a while. How can this be repaired?</p>	
460.	PR5	Cut-off Dates	<p><b>Cut-Off Date for Resettlement/Compensation Eligibility</b> In principle, the concept of widely publicizing a cut-off date for resettlement/compensation eligibility should make the planning for and execution of resettlement/ compensation programs more straightforward and predictable. Such situations are especially exacerbated in locations where legal title to land by land users does not exist, however. Therefore, a suitably short notification period should be specified in paragraph 19 of Performance Requirement 5 that is appropriately linked to the <u>completion</u> of a key project milestone – for example, 5 business days immediately following the completion of the data acquisition period associated with establishing a project’s initial social database (versus <u>during</u> this activity). This will help to limit inappropriate claims being made by individuals/communities to lands to be disturbed/utilized by a project and/or avoidance/reduction of the establishment of clandestine improvements on lands to be disturbed/utilized by a project by individuals/communities seeking an economic benefit.</p>	<p>Noted. Our experience demonstrates that applicable legislation (e.g. licencing procedures), projects and respective key milestones differ depending on the sector and country/regional/local context. Appropriate timeframes should be established and agreed upon based on the project context and be recorded in respective frameworks and/or plans. We anticipate guidance notes to provide further details.</p>
461.	PR5	Human Rights	<p><b>“Protection of” and “Respect for” Human Rights</b> In accordance with the United Nations “Guiding Principles on Business and Human Rights”, the governments of sovereign nations are required to <u>protect</u> the human rights of their citizens while companies working in such nations are required to <u>respect</u> human rights. This important shared responsibility (along with the required access to remedies) needs to be unambiguously stated in paragraph 5 of Performance Requirement 5.</p>	<p>PR1 sets out the overall requirements for addressing human rights, PR5 further states that; “<i>Application of this Performance Requirement (“PR”) supports and is consistent with the universal respect for, and observance of, human rights and freedoms and specifically the right to adequate housing and the continuous improvement of living conditions. In cases where there has already been displacement as a result of conflict, this PR is guided by the Guiding Principles on Internal Displacement.</i>”</p>
462.	PR5	Para 33	<p>In the case of physically displaced persons, paragraph 33 talks about restoring their standard of living. What does this mean? If people are dirt poor before being displaced, is everything good as long as we meet the standard of not making them worse off than being dirt poor? This might be seen as inconsistent with other provisions of the PR. For example, paragraph 31 says that resettlement sites will offer improved living conditions. This seems to point to a more general issue related to</p>	<p>Text revised as follows: “...to improve, or at minimum restore, their standards of living at an adequate alternative site.”</p> <p>The objectives of the PR also include:</p> <ul style="list-style-type: none"> <li>• <i>To restore, or where possible, improve the livelihoods and standards of living of displaced persons to pre-displacement levels; and</i></li> <li>• <i>To improve living conditions among physically displaced</i></li> </ul>

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			all of the actions contemplated in this PR (resettlement, compensation, etc.) regarding what are the obligations toward people who are physically or economically displaced. Other places in the document talk about using market values for assets lost as a benchmark. In the case of isolated rural people whose livelihoods are tied to biodiversity and the integrity of natural ecosystems, how are the market values for these established? Does there need to be a statement or principle about what standard we are shooting for?	<i>persons through the provision of adequate housing , including security of tenure at resettlement sites.</i>
463.	PR5	Living Conditions	<b>Inconsistencies Regarding Requirements for Living Conditions for Resettled Individuals/Communities</b> [We] agree with the statement that appears in the third bullet of paragraph 6 of Performance Requirement 5 – i.e., at a minimum, the livelihoods and standards of living of displaced persons need to be restored to pre-displacement levels, and where achievable, sustainable and cost-effective opportunities exist to improve these conditions, this should be the <u>goal</u> . However, in the last sentence of paragraph 31 in PR5, the stated <u>requirement</u> is improved living conditions for resettled individuals/households/communities; i.e., this sentence is inconsistent with the earlier, correctly-articulated benchmark. Therefore the correct wording of this sentence is as follows: “New resettlement sites built for displaced persons will offer at a minimum pre-displacement living conditions, and where achievable, sustainable and cost-effective opportunities exist to improve these conditions, this should be the goal.”	The text revised as follows: <i>“New resettlement sites built for displaced persons will offer, at a minimum, pre-displacement living conditions and where achievable, sustainable and cost-effective opportunities to improve the standard of living.”</i>
464.	PR5	Socio-economic status	Paragraph 18. Whose perception of " <i>sustainable improvements to their socio-economic status</i> " is expected to be considered? The one of the project developer, or the PAP's?	The socio-economic assessment and census provide baselines for establishing, among others, socio-economic status of the affected people. The paragraph continues to state that the respective " <i>standards for compensation are to be transparent and consistent within the project.</i> "
465.	PR5	PAP Compensation Packages	Paragraph 13. First bullet. " <i>Affected persons shall be given the opportunity to participate in the negotiation of the compensation packages...</i> " Often Law supports negotiations between the PAP and Project Developer on the compensation packages. If no agreement is reached than the Court will decide. But the things become problematic the very moment when the project developer is company owned by the government, which regularly, in the name of National Interest seeks to avoid hardest way of reaching compensation agreement and offers, and stands only for, compensation in cash. There is no mechanism in ESP to impose pressure to the project developer to accept the hardest and ethical way in compensation of PAP. Can this PR create mechanism that will prevent Project	The requirements of this PR, inclusive of the requirement for the negotiation of the compensation packages, apply to and are mandatory to all the projects EBRD finances.



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			developers to avoid the possibility for fair and negotiated compensation?	
466.	PR5	Footnote 8	FN8 in PR5 needs to be fleshed out more; more guidance.	Noted. We plan to provide more detailed information and guidance on addressing compensation for loss of assets at replacement cost in the resettlement guidance notes.
467.	PR5	Para 11	Para 11 – negotiated settlements often go the way of the sponsor or government. EBRD should take a more proactive role in these processes.	Noted. Thank you.
468.	PR5	Para 16	Para 16 – The requirement for a detailed consensus study is seen as a positive; however, this process also needs to establish the project’s boundaries and fully identify the project affected people.	Socio-economic baseline assessment, typically preceding the detailed census, establishes the project boundaries and identifies the project affected people. In some cases, either due to scope and scale of resettlement or project timing, full identification of the people affected by resettlement is done during detailed census.
469.	PR5	Loss of Public Amenity	Paragraph 41 (loss of public amenity) in PR5 was commended. How does this cover loss of other social benefits (not involving loss of land)? For example Bank projects are denying people access to water resources.	Text revised to further specify and to include “ <i>water resources for agriculture, recreation or fishing</i> ”.
470.	PR5	Legal Assistance for displaced people para 19	The commitment to provide legal assistance for displaced people has been removed from the draft PR5. What is the rationale for removing it? It ought to be put back in. (2008) 19. The RAP should incorporate measures to ensure that displaced people are provided, where possible, with legal assistance to enable them to complete administrative requirements prior to land acquisition and, if needed, to seek redress from the courts.	This was an error and the text will be replaced. Thank you for bringing it to our attention.
471.	PR5	Legal Assistance Para 19	The draft text removed the provision of support for legal advice, and this should be re-inserted.	This was an error and the text will be replaced. Thank you for bringing it to our attention.
472.	PR5	Legal Assistance para 19	[We] welcome the new paragraph 4 that safeguards project-impacted communities from forced evictions. However we note the following negative changes or lacking improvements: <ul style="list-style-type: none"> <li>• The requirement for legal assistance has been taken out as compared to the 2008 version;</li> <li>• Resettlement sites must comply with only one or more of the seven criteria for adequate housing set out under international law, and without referring to the elaboration of these criteria set out by the CDESCR.</li> </ul>	The paragraph on legal assistance is reinstated. The deletion was an error.  Text revised to reflect compliance requirement with all seven criteria for adequate housing.
473.	PR5	Legal Assistance	PR5: we welcome the new forced eviction paragraph; however, we note that the financial assistance paragraph was taken out. Why?	The paragraph on legal assistance is reinstated. The deletion was an error.

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474.	PR5	Grievance Mechanisms	PR 5: Grievance Mechanisms do not function in practice. EBRD needs to work with NGOs and communities to ensure that these are indeed functioning (and understood by all). There needs to be some sort of independent mechanism that protects project affected persons from the sponsor.	Noted. Resettlement and livelihood restoration process monitoring may include third parties such as NGOs, independent consultants.
475.	PR5	Resettlement / Monitoring	This is a specific problem—it is a long process and does not happen in line with EU and EBRD standards. We do not see a positive example of EBRD—clients sign formal requirements but they don’t implement them—and EBRD continues to disburse funds and do new projects. This turns organised “resettlement” into much more like expropriation. Human and property rights are not respected. The Bank is not around to monitor, and the reports sent from the company to the Bank are unlikely to have accurate information. The next step may be legal cases to question the whole role of EBRD.	Noted. The revised policy and PRs attempt to clarify all the requirements, including those concerning resettlement monitoring. We also expect that the more detailed resettlement guidance notes will help to clarify respective requirements and responsibilities regarding physical and economic displacement.
	<b>PR6</b>			
476.	PR6	General	Cross reference to other PRs might be useful - particularly those related to environmental evaluation, indigenous peoples and affected communities (seem to be included in footnote 3 on page 1), resettlement (from a natural resource access perspective), and disaster risk management?	Agreed – cross referencing other PRs have been incorporated, where appropriate
477.	PR6	General	We are concerned with draft revised EBRD Environmental and Social Policy (ESP) introducing a number of changes that effectively lower bank’s requirements in the field of biodiversity conservation and protection of valuable natural areas from human intervention. In most of bank’s countries of operations, there are very few natural areas left and the utmost should be done to prevent the loss of that little we still have. The EBRD's general approach to dealing with the environment - environmental 'management' rather than environmental protection - does not help in this task. Clarification and extension of this approach in the new ESP draft could inspire more projects potentially negatively impacting natural sites, including vulnerable areas and habitats of vulnerable species.	Based on extensive consultation with CSOs, international biodiversity conservation organizations, consultants and the private sector, we deem that PR 6 has been strengthened since the 2008 ESP.  Specifically, additional clarity and client requirements have been provided in the areas of ecosystems, priority biodiversity features, baseline data collection, adaptive management, protected areas and the management of living natural resources.
478.	PR6	Terminology	<ul style="list-style-type: none"> <li>Definitions should be provided for the terms “high biodiversity value” and “archaeological importance” – otherwise these terms could be subject to inconsistent application and/or misinterpretation.</li> <li>Admittedly, unambiguous definitions for these terms may be difficult to provide; nevertheless, any definitions of “high biodiversity value” and “archaeological importance” that are included in Appendix 2 (and elsewhere in the Environmental and</li> </ul>	EBRD will develop a Guidance Note that will provide clients with additional clarity on key definitions and concepts included in PR6

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			<p>Social Policy and the Performance Requirements) should be consistent with the terminologies of credible recognized independent international organizations.</p> <ul style="list-style-type: none"> <li>How does one determine the extent of the precautionary approach, especially for restoration?</li> <li>It seems like ERBD uses the word "habitat" as a unit of ecological/biodiversity value. This point requires greater clarity.</li> </ul>	
479.	PR6	Objectives	<p>“4. The Objectives of this PR are:</p> <ul style="list-style-type: none"> <li><b><u>To exclude investments in protected areas of IUCN category I and II and other areas of critical conservation value;</u></b></li> <li><b><u>In protected areas of IUCN category III to VI, in the vicinity of protected areas of IUCN category I and II, and in other areas of priority biodiversity value,</u></b> to conserve and restore biodiversity using the precautionary principle <b><u>by adopting</u></b> the mitigation hierarchy approach with the aim of achieving <b><u>a net gain of biodiversity everywhere possible and at least</u></b> no net loss of biodiversity <b><u>and, where appropriate, a net gain of biodiversity</u></b>; and</li> <li>To promote good international practices (GIP) in the sustainable management and use of natural living resources.”</li> </ul>	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p> <p>Note – all projects that EBRD finances must adhere to relevant EU substantive requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).</p>
480.	PR6	Weakening of PR	<p>The Project Requirements on biodiversity conservation and sustainable management of living resources (PR3) has not been strengthened by more binding commitments on behalf of the EBRD to ensure compliance of financed projects with EU law and standards, as mentioned above. Moreover, a number of changes suggest a significant weakening of biodiversity safeguards, for example:</p> <ul style="list-style-type: none"> <li>At the very start we are told that “<i>The objectives of biodiversity conservation and sustainable management of living natural resources <b>must be balanced</b> with the potential for utilising the multiple economic, social and cultural values of biodiversity and living natural resources in an optimised manner.</i>”;</li> <li>The objective is “<i>no net loss of biodiversity</i>”, which suggests that biodiversity loss can be compensated, a claim which has yet to be sufficiently proven and should not be relied upon.</li> <li>It is not clear what happens if the status of a protected area does not allow for mitigation, eg. according to national law some protected areas are out of reach for industrial activities, although the implementation of this law can be weak: “<i>Where the project occurs within or has the potential to adversely affect an area that is <b>legally protected or internationally recognised or designated for protection</b>, the client</i></li> </ul>	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p> <p>Note – all projects that EBRD finances must adhere to relevant EU substantive requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).</p>

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			<p><i>must identify and assess potential project - related impacts and apply the mitigation hierarchy so as to prevent or mitigate impacts from projects that could compromise the integrity, conservation objectives or biodiversity importance of such an area.</i>” Also the requirements for 'due process' are deleted, raising questions about the permitting procedures and the public participation in deciding on these measures.</p> <ul style="list-style-type: none"> <li>• Destructive project activities can be implemented in <b>critical habitats</b> if, among other criteria, “<i>no other available alternatives within the region exist for development of the project in habitats of lesser biodiversity value</i>” - in the case of underground resources where project siting cannot have alternatives, this new condition is the exact opposite to [our] demand for no-go zones. But this condition will be applied to projects in other sectors as well, eg. for hydro-power, as long as there are “<i>no technically and economically feasible alternatives</i>” which clients will almost always argue is the case;</li> <li>• EBRD's responsibility in designing and approving mitigation measures and strategies is underplayed by transfer of responsibilities to the client (see below).</li> <li>• The general approach to safeguarding the environment, as environmental management rather than environmental protection, is clarified and enhanced. The mitigation hierarchy – avoid / minimise / mitigate / offset – confirms the approach that there are no show-stoppers, no no-go zones, no impact that cannot be managed and should thus prevent an investment proposal.</li> </ul> <p><b>Recommendations:</b> On Para 4, Objectives, change the second bullet point as follows: “<i>To adopt the mitigation hierarchy approach, with the aim of achieving no net loss of biodiversity, and where appropriate, a net gain of biodiversity;</i>” Throughout the PR, delete all references to biodiversity offsets and 'no net loss' of biodiversity. Establish no-go zones for:</p> <p>(a) areas protected by national or international law, such as national parks or reserves, Natura 2000 sites and UNESCO World Heritage sites</p> <p>(b) areas not protected by law but which are (i) high conservation value areas, critical ecosystems, water-catchment areas and biological corridors; (ii) areas important for food security and traditional livelihoods; and (iii) territories of indigenous peoples where full free prior and informed consent has not been obtained, following the recommendations of the IUCN from the World Congress in Barcelona in 2008.</p>	

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			<p>Paragraphs 8 and 10 of PR6 practically lower the quality of the ESIA of the project required from the clients. According to paragraph 8 “in planning and implementing the biodiversity baseline and impact assessments clients will refer to relevant good practice guidance” and “where further investigations are needed to provide greater certainty of the significance of potential impacts, the client may carry out additional studies and/or monitoring before undertaking any project-related activities” meaning that instead of requiring the client to prepare a high quality ESIA report that assesses all potential impacts of the project before Board Approval (which would be considered as an added value of the Bank) the Bank just accepts an ESIA relevant to the vague “good practice guidance utilising desktop and field-based approaches” that in most cases is not enough and is causing irreversible negative impacts on biodiversity. In paragraph 10 the Bank introduces adoption of adaptive management practice instead of stricter and more effective measures for environmental protection.</p> <p>In Para. 14, clarify as follows: “<i>Consequently, in areas of critical habitat, the client will not implement any project activities unless <b>all</b> of the following conditions are met.</i>”</p>	
481.	PR6	Weakening of PR6	<p><b>Weakening of PR 6 on biodiversity conservation (ESP)</b></p> <p>The previous Performance Requirements on biodiversity conservation and sustainable management of living resources (PR6) needed to be strengthened by binding commitments on behalf of the EBRD to ensure compliance of financed projects with EU law and standards. However, this has not happened. Moreover, a number of changes suggest a significant weakening of biodiversity safeguards, lowering even the ambitions of the goals, for example: <i>The objectives of biodiversity conservation and sustainable management of living natural resources must be balanced with the potential for utilising the multiple economic, social and cultural values of biodiversity and living natural resources in an optimised manner;</i></p> <p>We believe that such formulation of objective implies that biodiversity loses may be considered by the bank as acceptable in certain cases, threatening effective implementation of environmental protection objectives. In [our country] realities such formulation would give "green light" to investors for developing projects in areas of potential conflict between nature conservation values and economic values of biodiversity or other natural resources. Following the adoption of the law on "green tariff" and the setting up of specialized lending facilities, new companies started to emerge ... whose activities are focused on</p>	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p> <p>Note – all projects that EBRD finances must adhere to relevant EU substantive requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).</p>

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			the use of these opportunities. It is therefore very important that the EBRD ESP clearly sets the frame/limits beyond which infrastructure projects will not be considered by the bank in order not to provoke development and to not lose efforts on the development and review of projects that may have adverse effects on biodiversity and will in the end be unacceptable. These new power generating companies are purely profit-driven, and they strive to get the cheapest available lands which are those that are in state property and not in use. Considering high percentage of land reclamation -- these remaining pieces of untouched lands are often valuable natural territories, crucial for conservation of vulnerable species that are yet to obtain protective status.	
482.	PR6	Weakening of PR6	<p>The previous PRs on biodiversity conservation and sustainable management of living resources needed to be strengthened by binding commitments on behalf of the EBRD to ensure compliance of financed projects with EU law and standards. ...A number of changes suggest a significant weakening of biodiversity safeguards for example:</p> <ul style="list-style-type: none"> <li>• At the very start we are told that “The objectives of biodiversity conservation and sustainable management of living natural resources <b>must be balanced</b>, with the potential for utilising the multiple economic, social and cultural values of biodiversity and living natural resources in an optimised manner.”;</li> <li>• The objective is “no net loss of biodiversity”, which suggests an acceptance of the notoriously unreliable idea of “biodiversity offsetting”, in which the destruction of one area or habitat is “compensated” by attempting to increase biodiversity somewhere else.</li> <li>• It is not clear what happens if the status of a protected area does not allow for mitigation, e.g., according to national law some protected areas are out of reach for industrial activities, although the implementation of this law can be weak: “Where the project occurs within or has the potential to adversely affect an area that is <b>legally protected or internationally recognised or designated for protection</b>, the client must identify and assess potential project-related impacts and apply the mitigation hierarchy so as to prevent or mitigate impacts from projects that could compromise the integrity, conservation objectives or biodiversity importance of such an area”. Also the requirements for “due process” are deleted, raising questions about the permitting procedures and the public participation in deciding on these measures.</li> <li>• Destructive project activities can be implemented in <b>critical habitats</b> if a number of criteria are satisfied; however, it is not clear</li> </ul>	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p> <p>Note – all projects that EBRD finances must adhere to relevant substantive EU requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).</p>

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			<p>whether all of these criteria must be satisfied or just one or two of them. If the latter, then the criterion that “no other viable alternatives within the region exist for development of the project in habitats of lesser biodiversity value” is worrying. In the case of underground resources where project siting cannot have alternatives, this new condition is the exact opposite to [our] demand for no-go zones. But this condition will be applied to projects in other sectors as well; e.g., for hydropower as long as there are “no technically and economically feasible alternatives” which clients will almost always argue is the case.</p> <ul style="list-style-type: none"> <li>• The EBRD’s responsibility in designing and approving mitigation measures and strategies is underplayed by the transfer of responsibilities to the client (see below).</li> <li>• The EBRD’s general approach to dealing with the environment—environmental “management” rather than environmental protection—is clarified and extended. The mitigation hierarchy—avoid/minimise/mitigate/offset—confirms the EBRD’s approach that there are no show-stoppers, no No-Go zones, no impact that cannot be managed and should thus prevent an investment proposal. In our opinion, however, there are simply some investments in some locations that should not take place, and these should be clarified (beyond the Exclusion List which basically only includes things which are internationally illegal anyway).</li> <li>• Paragraph 8 and Paragraph 10 of PR6 practically lower the quality of the ESIA of the project required from the clients. According to paragraph 8, “in planning and implementing biodiversity-related baseline and impact assessments, clients will refer to relevant good practice guidance” and “where further investigations are needed to provide greater certainty of the significance of potential impacts, the client <b>may carry</b> out additional studies and/or monitoring before undertaking any project related activities”, meaning that instead of requiring the client to prepare a high quality ESIA report that assesses all potential impacts of the project beforehand (which would be considered as an added value of the Bank), the Bank just accepts an ESIA relevant to the vague “good practice guidance utilising desktop and field-based approaches” that in most cases is not enough and causing irreversible negative impacts on biodiversity. In paragraph 10, the Bank introduces adoption of adaptive management practice instead of stricter and more effective measures for environmental protection.</li> </ul>	
483.	PR6	Independent Experts	<p><b>Conservation of Biodiversity: Requirements</b> The Assessment of issues and impacts should be thoroughly checked</p>	The draft 2014 ESP included this requirement in PR1, an overarching requirement for all projects. To avoid confusion, we have re-introduced this

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			by the Bank based on a Study /Report of a third party expert specialised in nature conservation.	requirement in PR 6 when projects have the potential to impact critical habitat and/or protected areas.
484.	PR6	EU Standards	<p>We are aware that the Natura 2000 network is relevant only for the EU member-states and EU candidate countries and, therefore not so relevant for all countries of operation of EBRD. Nevertheless, the countries in Central and Eastern Europe and the Balkans have rich biodiversity heritage both as diversity of species and habitats and area occurrence (as example the Network in Bulgaria is estimated as 34% of the state territory). Exposing the need of specific attention to the requirements of the Bird and Habitats Directives at the ESP of the Bank. Certain safeguard mechanisms, as the Environmental Impact Assessment and the Ecological Assessment of Natura 2000 sites, exists, but the practice shows that those mechanisms very often remains not understood by most of the relevant stakeholders as business, national and regional authorities, landowners and even EIA experts, which systematically leads to misinterpretation of those mechanisms and their manipulation for easy and faster approval of the projects to the detriment of the biodiversity;</p> <p>Creating in that way serious obstacles to the projects financed by the Bank resulting in extended lifetime and over costs. We are certain that those problems will be overcome along the increasing understanding of all stakeholders on the biodiversity value and the efficiency of environmentally friendly projects, but within the timeframe of the ESP for the next five years a better and precise requirements on NATURA 2000 will prevent significant problematic issues, including unplanned expenditures, both for the Bank, the Project sponsors and the Nature.</p> <p>The following text proposal includes parts of the Habitat Directive and relevant European Commission Guidelines<sup>1</sup> on Natura 2000: 1 Managing Natura 2000 sites, The general goal of Directives 92/43/EEC and 79/409/EEC concerning Natura 2000 network is to maintain or restore certain habitats and species at “favourable conservation status”, while taking into account economic, social, cultural and regional requirements, as a means to achieve sustainable development.</p> <p>The <i>conservation status</i> will be taken as „favourable“ when:</p> <ul style="list-style-type: none"> <li>- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and</li> <li>- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and</li> </ul>	Relevant substantive EU requirements apply to all EBRD projects, as outlined in PR1 and the ESP. Accordingly, we benchmark all projects against the EU Habitats Directive and Birds Directive as part of our PR6 related due diligence to ensure that the spirit of these requirements are met by our clients.



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			<p>- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;</p> <p>The conservation status of a <i>natural habitat</i> will be taken as „favourable“ when:</p> <ul style="list-style-type: none"> <li>- its natural range and areas it covers within that range are stable or increasing, and</li> <li>- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future,</li> </ul> <p>The purpose of Natura 2000 network, as described in Art. 6 of the Habitat Directive, is not only to prevent the deterioration, but to undertake proactive approach and anticipatory nature of the measures to be taken for the long-term maintenance resulting ideally in “increasing” of the areas. The terms “disturbance” and “deterioration” should be assessed against the conservation concept, against an aim of improving the conservation status announced at the time of the setting-up of the Network and the objectives of the Directives. This notion should be interpreted in a dynamic way according to the evolution of the conservation status of the habitat or the species.</p> <p>The description above is changing the safeguard mechanisms for assessment from the usual EIA requirements to the following:</p> <ul style="list-style-type: none"> <li>- the consistency of approach to what is “significant” effect on Natura 2000 site is necessary to insure that Natura 2000 functions as a coherent network and,</li> <li>- The safeguards set out in Article 6(3) and (4) are triggered not by a certainty but by a likelihood of significant effects. Thus, in line with the precautionary principle, it is unacceptable to fail to undertake an assessment on the basis that significant effects are not certain.</li> <li>- A likelihood of significant effects may arise not only from plans or projects located within a protected site but also from plans or projects located outside a protected site.</li> <li>- When determining likely significant effects, the combination of other plans or projects should also be considered to take account of cumulative impacts. It would seem appropriate to restrict the combination provision to other plans or projects which have been actually proposed or approved even if they are not implemented yet.</li> <li>- The „in combination“ reference in Article 6(3) has two implications in terms of the content of an assessment.</li> </ul>	

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			<p>Firstly, it means that the content of an assessment should address the potential for „in combination“ effects to arise from a specific plan or project under consideration in an approval procedure and other plans or projects not under consideration in the same approval procedures.</p> <p>Secondly, it means that the contents of the assessments of different plans or projects under consideration at the same time should include references to and take account of each other in so far as the different plans and projects give rise to „in combination“ effects.</p> <p>- The first step of the competent authorities is to examine the possibility of resorting to alternative solutions which better respect the integrity of the site in question. Such solutions should normally already have been identified within the framework of the initial assessment carried out under Article 6(3). They could involve alternative locations (routes in case of linear developments), different scales or designs of development, or alternative processes. The „zero-option“ should be considered too. This assessment should be made against the site’s conservation objectives.</p> <p>All these aspects above may be considered as ideally forming part of an iterative process seeking to improve the siting and design of a plan or project at the earliest stages.</p> <p>We expect that leading public institutions, as European Bank for Reconstruction and Development, will enhance their policies for correct and meaningful implementation of the higher existing standards for environmental protection.</p>	
485.	PR6	Social Determinants of Health	<p>Here there are a number of environmental and social determinants of health of relevance:</p> <ul style="list-style-type: none"> <li>- Biodiversity can be an important contributor to local livelihoods. Its loss, can have important impacts on income, as well as food and nutrition security, particularly if affected communities are subsistence hunters, gatherers, or farmers (<b>Note</b>: there are existing indicators related to nutritional status that can be used to signal this);</li> <li>- Changes in ecosystems (and habitats) can influence the spread of diseases, e.g. because of changes in vector borne disease patterns, because of changes in human and animal interactions and potential for spread of diseases (zoonotic diseases);</li> <li>- Ecosystems services provide many critical services for health and</li> </ul>	We have strengthened paragraph 9 of PR 6 to better reflect the dependence on ecosystems by project affected communities.

	Ref.	Issue	Comment	Management Response
			<p>well-being, e.g. water purification and retention.</p> <ul style="list-style-type: none"> <li>- Many traditional cultures rely on traditional medicine. Loss of ecosystems and biodiversity that supports these natural medicines can have a range of negative consequences for dependent communities (financial, psychological, and potentially health)</li> </ul>	
486.	PR6	Para 24	<ul style="list-style-type: none"> <li>• suggest adding a sentence on biosecurity: Clients will develop a biosecurity management plan that details measures on protecting biodiversity through the prevention of transfer of pathogens and disease between domestic and wild populations of plants and animals e.g. foot and mouth, TB, bird flu.</li> <li>• Also sentence on gene-security: clients will assess the risk of gene transfer between domesticated plants and animals and take appropriate steps to protect biodiversity, [this would apply to where GMOs are used, but also where non-GMO domesticated plants and animals could interbreed with native populations.</li> </ul> <p>Another possible angle on this issue is the loss of potentially useful genetic material [e.g. for crop breeding, future medicinal use etc] this could be implemented through the assessment of impacts to wild/cultivated populations of ancient crop types, or loss of large areas of uncategorized habitats rain-forest that have not been categorized.</p>	While the issues of both biosecurity and gene security are important issues to consider for agricultural projects, such level of detail is best placed in a guidance note that expands upon the various issues that clients need to consider as part of their assessment process.
487.	PR6	Para 25	<p>This section needs complete overhaul. Firstly suggest that needs to cover Pesticide <b>and fertilizer</b> use and management. Could also be expanded to include protection of soils.</p> <p>Focus of section should be the protection of biodiversity [remove current emphasis on human health and sustainable resource management] - both <b>within crop</b> and also in <b>adjacent areas</b> that could be affected by spray drift, run-off etc. Possibly could put some emphasis on protecting downstream wetlands from run-off of agro-chemicals and sediments.</p>	Based on feedback from various clients, consultants and conservation organisations, the entire section of PR 6 <i>on Conservation Management of Living Natural Resources</i> has been revised to emphasise biodiversity vs. human health.
488.	PR6	Para 26	<p>Bullet point 1: This section should be re-written to focus on biodiversity and not human health. Some substances that are more benign to humans are more toxic to some faunal groups. Also need to consider how this can be implemented and enforced.</p> <p>There is a large mismatch here with requirement to follow EU laws which would limit chemicals approved by EU - see para 20.</p>	Based on feedback from various clients, consultancies and conservation organisations, the entire section of PR 6 <i>on Conservation Management of Living Natural Resources</i> has been revised to emphasise biodiversity vs. human health.

	Ref.	Issue	Comment	Management Response
489.	PR6	Para 30 Fisheries	<p>Would suggest need to increase assessment of potential risk of escape of non-native species into adjacent catchments either open or closed. Also need to assess risk and implement avoidance of transfer of disease and parasites to wild populations.</p> <p>Also use of pesticides and eutrophication from waste food / excrement can be big issue in artificial fishery in clean waters.</p> <p>Does this section also cover shrimp farms in areas of mangrove? I would suggest that the loss of potential natural fish nurseries need assessing [estuaries, reefs, mangroves] - i.e. artificial fisheries could impact adjacent [or remote] natural fisheries.</p>	The Fisheries and Aquaculture section of PR6 has been revised to address this concern.
490.	PR6	Biodiversity conservation	<p>“11. Where priority biodiversity features are identified as part of the appraisal process, the client will <del>seek to</del> avoid impacts on such priority biodiversity features in accordance with the mitigation hierarchy, <b><u>in particular through identifying alternative locations in the region and/or other alternative solutions achieving the project goal</u></b>. When avoidance of impacts to priority biodiversity features is not possible <b><u>due to a lack of alternatives</u></b>, measures to minimise and/or mitigate these impacts and rehabilitate impacted biodiversity should be implemented. As a last resort where any residual impacts remain, the client may consider the use of compensatory measures where appropriate, such as biodiversity offsets, <b><u>duly integrating ecosystem services in a holistic approach</u></b>.”</p> <p><b><u>11. a (new) In instances where biodiversity offsets are proposed as part of the mitigation strategy, the client must demonstrate through an independent assessment that the project’s significant residual impacts on biodiversity will be adequately mitigated to meet the requirements of paragraph 11.”</u></b></p>	Paragraphs 11 and 12 has since been strengthened to address these concerns
491.	PR6	Critical Habitats	EBRD should strengthen the protection of critical habitats and not accept offsets for critical habitat impacts.	<p>Our experience is that carefully designed projects, even those located in critical habitat, can meet the requirements of PR 6.</p> <p>We understand however that some groups feel that offsets should not be allowed, regardless of the habitat designation. Accordingly, we have strengthened EBRD’s requirements to specify that offsets should only be proposed as a last resort and that clients must apply the mitigation hierarchy.</p> <p>This approach is consistent with other MFIs.</p>
492.	PR6	Critical Habitats	Habitat protection and responsible livelihood provision is a good thing. It needs to assured, however, that there are no projects that could result in habitat loss.	This is addressed under the existing language.

	Ref.	Issue	Comment	Management Response
493.	PR 6	Protected areas	The ESP should specifically require measures for the protection of wetlands given their ecological function/importance.	This is addressed under the existing language.
494.	PR6	Protected Areas	<p>“17. Where the project occurs within or has the potential to adversely affect an area that is legally protected or internationally recognised or designated for protection <b><u>and/or falls under IUCN III to VI</u></b>, the client must identify and assess <b><u>through an independent impact assessment</u></b> potential project-related impacts and apply the mitigation hierarchy so as to prevent or mitigate impacts from projects that could compromise the integrity, conservation objectives or biodiversity importance of such an area. <b><u>Protected areas of IUCN category I and II are not eligible for EBRD investment.</u></b>”</p> <p>==</p> <p>We believe that EBRD funds should not be invested in critical habitats such as National Parks as impacts can never be fully avoided nor mitigated. Other areas of high value because of special biodiversity features or valuable ecosystem services such as landscape parks should be treated with particular care and full respect to the mitigation hierarchy.</p>	<p>Paragraph 17 has since been strengthened to address the concerns of our stakeholders.</p> <p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p>
495.	PR6	Protected areas	The protected areas section of PR6 would be strengthened if it included IBAs.	Paragraph 17 has since been strengthened to address the concerns of our stakeholders. IBAs are now covered under paragraph 11.
496.	PR6	Protected areas	There is a gap in PR6 regarding the protection of the Natura 2000 (N2K) sites in our region. For example, 34% of Bulgaria is considered to be protected. What is done if a project potentially impacts a N2K site? Can they still go forward and be financed by EBRD? PR6 needs to be stronger in promoting and enhancing protected areas, not just conserving them.	Paragraph 17 has since been strengthened to address the concerns of our stakeholders.
497.	PR6	Protected Areas	Additional safeguards for the protection of N2K should be included in PR6. EBRD should help its COO implement and enforce their international commitments.	<p>Paragraph 17 has since been strengthened to address the concerns of our stakeholders.</p> <p>We recognise that EBRD needs to work with COO to increase awareness of the Bank’s requirements and build local capacities to implement country level commitments. These initiatives are outside of the ESP but form an important part of the Bank’s TC work.</p>
498.	PR6	Protected areas	PR6 protected areas – not just natural parks and protected areas, but should also include buffer zones to protected objects, e.g. protection zones along rivers and around lakes.	Paragraph 17 has since been strengthened to address the concerns of our stakeholders.
499.	PR6	Protected areas	PR6 worrying – requirements for protected areas seems to be weaker than in 2008 ESP.	Paragraph 17 has since been strengthened to address the concerns of our stakeholders.

	Ref.	Issue	Comment	Management Response
500.	PR6	Sensitive locations	Sensitive locations – how are these defined? They should include Natura 2000, IUCN categorised areas, water bodies where EU Water Framework Directive water quality status class is high or good.	In the coming months, the Bank will develop a Guidance Note to PR6 to provide greater clarity to our clients and stakeholders interpret and implement PR6.
501.	PR6	No Net Loss	<p><b>“No Net Loss” and “Net Gain” of Biodiversity</b> In paragraph 4 of Performance Requirement 6 (second bullet), goals related to “no net loss” and “net gain” of biodiversity appear. Furthermore, expectations to achieve “no net loss” and preferably “net gain” in locations featuring “priority biodiversity features” appear in paragraph 12 (second bullet), and in paragraph 14 (fourth bullet) a requirement is presented to deliver net biodiversity gains in “critical habitat” to be affected by a project. The concepts of “no net loss” and “net gain” as related to biodiversity are relatively new, and not surprisingly, there are no universally accepted/sanctioned mechanisms for determining the appropriateness of proposed “no net loss” and “net gain” of biodiversity measures and assessing the ultimate success of any measures that are implemented. Therefore, in the Environmental and Social Policy and the associated Performance Requirements (including Performance Requirement 6), the EBRD should (as is correctly stated in the second bullet of paragraph 4 of PS6) continue to <u>aim</u> for “no net loss” and/or “net gain” of biodiversity in the projects it supports – mandating attainment of these ill-defined benchmarks in any biodiversity setting is inappropriate. Furthermore, no mention is made of the critically important socioeconomic relationships associated with and ramifications of “no net loss” and “net gain” of biodiversity.</p>	<p>This is stated in PR6 Objectives, 2<sup>nd</sup> bullet:</p> <p><i>“To adopt the mitigation hierarchy approach, with the aim of achieving no net loss of biodiversity, and where appropriate, a net gain of biodiversity.”</i></p>
502.	PR6	Climate Change	<p><b>Projected Climate Change Impacts</b> Since the science related to climate change continues to evolve, it is not possible to craft with any great certainty “projected climate change impacts” (see paragraph 7 of Performance Requirement 6) – rather, a range of potential such impacts (or more appropriately risks) is the best that the EBRD could expect from its clients.</p>	See revised paragraph 7 where we specify that the client needs to identify potential opportunities, risk and impacts
503.	PR6	General	<p>General Comments:</p> <ul style="list-style-type: none"> <li>*need to incorporate migratory corridors and connectivity within a landscape</li> <li>*need to take a landscape approach</li> <li>*there should be reference to the need to maintain environmental flows</li> <li>*full life cycle accounting to ensure project focused on climate reduction strategies deliver reductions, and that environmental externalities are integrated</li> <li>*efforts should be made through out EBRD to strengthen a countries own safeguard framework and raise capacity</li> <li>*greater reference and use of biodiversity specialists and qualified</li> </ul>	<p>Paragraphs 7-19 have been revised to address many of these points including the importance of IBAs, landscape level approach, the need for biodiversity specialists in the appraisal process etc.</p> <p>Additional guidance on PR 6 will be provided in a Guidance Note.</p>

	Ref.	Issue	Comment	Management Response
			<p>experts is required</p> <p>*needs clearer explanation and details on due diligence role of the bank</p> <p>*greater use of biodiversity experts</p>	
504.	PR6	Miscellaneous comments	<p>Article 1: it is not just the conservation of biodiversity, it is the fact that biodiversity provides the foundation on which society is built, from ecosystems and habitat to the provision of ecosystem services</p> <p>Article 2: I would suggest the following wording which would highlight the fundamental role of the environment and biodiversity in delivering sustainable development. As it is currently written this suggests that biodiversity conservation usually trumps economic and social where as in fact it is the other way around usually. The objectives of economic growth and sustainable development must be approached in a way which ensures the sustainable management of the living natural resources, and the maintenance of biodiversity and ecosystem function on which society relies. Any use of resource for multiple economic, social and cultural values must be achieved in an optimised manner.</p> <p>Objectives: would be good to see an ecosystem approach as defined and adopted by the convention on biological diversity to also referenced. Either here on in the introduction taking a landscape/ecosystem approach would ensure sustainability over all of the operations of the bank</p> <p>GIP is not just linked to the management and use of natural living resources, it is also linked to operations which affect through on going activities, biodiversity e.g. wind turbines that minimise risk to birds, transmission line design with minimise impacts on the environment, construction practices which reduce waste and environmental externalities. "To promote good international practices, throughout the life cycle of a project (from initiation to closure) in the sustainable management of and use of natural living resources, and in the operation of facilities which minimise environmental externalities and negative impacts.</p> <p>Article 7: This should be a comprehensive list, or not be a list at all. There are a number of elements missing here. Language such as "that they support, considering but not limited to..."</p> <p>Overall this is also too focussed on direct species loss. There should be referenced to cumulative impacts and also indirect impacts. Take a landscape level approach and look at the potential impact on migratory</p>	<p>Paragraphs 7-19 have been revised to address many of these points including the importance of IBAs, landscape level approach, the need for biodiversity specialists in the appraisal process etc.</p> <p>Additional guidance on PR 6 will be provided in a Guidance Note.</p>

	Ref.	Issue	Comment	Management Response
			<p>corridors.</p> <p>Article 8: this should include a reference to clients being required to use appropriate biodiversity experts.</p> <p>Article 11: a landscape approach and the need to take into account migratory corridors should be referenced</p> <p>Footnote 5: there should be additional language on the need to take into account migratory pathways and to reduce impacts on migratory pathways and ensure site connectivity. Migratory pathways are essential ensuring sites integrity is maintained, a negative impact in one area of a corridor has the potential to have significant impact somewhere else. The integrity of a migratory pathway must be ensured. Including migratory connectivity can help deliver protection of a species throughout its entire range</p> <p>Suggest additional language on "(vi) known migratory pathways of regional or international importance which link key sites, as agreed with recognised experts"</p> <p>priority biodiversity identified by a broad set of stakeholders, needs to be further defined in a note or guidance section.</p> <p>How do para 11 and 12 work together? Seems to be some confusion or ambiguity here. Not 100% clear how reference to avoidance measures not being possible, as this comes down to interpretation.</p> <p>Article 17:Needs to be expanded to included proposed areas, also areas that are not formally protected. Screening and scoping needs to also take into account protected areas which have been degazetted</p> <p>Article 32: Priority habitat features--is this a typo and should refer to priority biodiversity features?</p>	
505.	PR6	Footnote 5	<p><b>“Vulnerable Species” and “Highly Threatened Habitats”</b> In footnote 5 of Performance Requirement 6, the term “vulnerable species” appears without an associated internationally recognized definition/reference; similarly in paragraph 13, the term “highly threatened habitats” appears without an associated internationally recognized definition/reference. Internationally recognized definitions/references associated with these terms should be provided to assist a client in determining with certainty and consistency whether or not such species and/or habitat(s) exist in a project’s location. The IUCN could potentially be a source of the required definitions.</p>	Additional guidance on definitions included in PR 6 will be provide in a Guidance Note



	Ref.	Issue	Comment	Management Response
506.	PR6	Miscellaneous Comments	<p><i>The objective is “no net loss of biodiversity”;</i>  This suggests an acceptance of the notoriously unreliable idea of 'biodiversity offsetting' in which the destruction of one area or habitat is 'compensated' by attempting to increase biodiversity somewhere else. We are absolutely against such approach – artificial ecosystem cannot fully compensate for the lost values of natural ecosystem. Therefore, effective stopping of biodiversity loss is only possible through preservation of existing natural ecosystems. The objective of PR6 therefore should be no loss of biodiversity and natural habitats.</p> <p><i>“Where the project occurs within or has the potential to adversely affect an area that is legally protected or internationally recognised or designated for protection, the client must identify and assess potential project - related impacts and apply the mitigation hierarchy so as to prevent or mitigate impacts from projects that could compromise the integrity, conservation objectives or biodiversity importance of such an area.”</i></p> <p>The mitigation hierarchy – avoid / minimise / mitigate / offset – confirms the EBRD's approach that there are no no-go zones, no impact that cannot be managed and should thus prevent an investment proposal. In our opinion, however, there are simply some investments in some locations that should not take place, and criteria should be set up in the way to reject projects that are destructive to natural ecosystems and threatening biodiversity losses. It is not clear what happens if the status of a protected area does not allow for mitigation, eg. according to national law some protected areas are out of reach for industrial activities, although the implementation of this law can be weak. Also the requirements for 'due process' are deleted, raising questions about the permitting procedures and the public participation in deciding on these measures.</p> <p>Also PR6 allows for implementing destructive projects in critical habitats if a number of criteria are satisfied, however it is not clear whether all of these criteria must be satisfied or just one or two of them. If the latter, then the criterion that “no other viable alternatives within the region exist for development of the project in habitats of lesser biodiversity value” is worrying. In the case of underground resources where project siting cannot have alternatives, this new condition is the exact opposite to environmental NGOs demand for no-go zones. But this condition will be applied to projects in other sectors as well, eg. for hydro-power, as long as there are “no technically and economically feasible alternatives” which clients will almost always</p>	<p>Our experience is that carefully designed projects, even ones located in critical habitat or protected areas, can meet the requirements of PR 6.</p> <p>We understand however that some groups feel that offsets should not be allowed, regardless of the habitat designation. Accordingly, we have strengthened EBRD’s requirements to specify that offsets should only be proposed as a last resort and that clients must apply the mitigation hierarchy.</p> <p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p> <p>Note – all projects that EBRD finances must adhere to relevant EU substantive requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).</p>

	Ref.	Issue	Comment	Management Response
			<p>argue is the case;</p> <p>Paragraph 8 and paragraph 10 of PR6 practically lower the quality of the ESIA of the project required from the clients. According to paragraph 8 “in planning and implementing biodiversity related baseline and impact assessments clients will refer to relevant good practice guidance” and “where further investigations are needed to provide greater certainty of the significance of potential impacts, the client may carry out additional studies and/or monitoring before undertaking any project related activities,” meaning that instead of requiring the client to prepare a high quality ESIA report that assesses all potential impacts of the project beforehand (which would be considered as an added value of the Bank) the Bank just accepts an ESIA and, according to our experience, merely “review” it and may request some additional studies of certain potential impacts, or may not request. In some cases this additional studies are finalized after project’s approval, and in cases of unacceptable impacts being identified, it is difficult to cancel such project and procedure for cancellation is not described in ESP or, to our knowledge, elsewhere in bank’s document available to public. Considering all of the above we ask you to introduce following changes into final draft of ESP:</p> <p>In the text of the Performance Requirement 6:</p> <ol style="list-style-type: none"> <li>1. The objective of PR6 must be protection and conservation of biodiversity. PR6 priority must be no loss of the existing natural habitats and no loss of biodiversity;</li> <li>2. PR6 should define "no-go zones", where any projects of categories A and B will not be considered. No go zones should cover IUCN categories I-IV and corresponding protected areas within national categorization systems, the areas with high conservation value/importance territories (eg. upstream of rivers, riparian floodplains, intact (virgin) forests, mountainous wetlands, habitats of rare and endangered species and subspecies).</li> <li>3. PR6 should include requirement for the projects to comply with the EU Habitats Directive;</li> <li>4. All studies of the significant impacts should be done within the scope of EIA before the final decision on project.</li> </ol>	
507.	PR6	Biodiversity Offsets	<p><b>Biodiversity Offsets GIP</b> In footnote 6 of Performance Requirement 6, there is a requirement to adhere to “GIP” in regard to biodiversity offsets. The EBRD should define what exactly “GIP” is in relation to biodiversity offsets or provide appropriate references to this effect –</p>	GIP is defined in PR1; a Guidance Note specific to PR 6 will be developed and made publicly available to assist our clients and stakeholder interpret and implement PR6

	Ref.	Issue	Comment	Management Response
			otherwise, it is recommended that footnote 6 be reworded as follows: “Biodiversity offsets should be developed with relevant stakeholders.” The necessity of defining the term “relevant stakeholders” has already been highlighted above.	
508.	PR6	Off-sets	PR6 used to have specific wording for EBRD to agree on the offset measures with the client before they are carried out/implemented. Could you please revisit this language to ensure that EBRD has a say in these measures.	This is covered under the existing PR6 – see paragraph 16.
509.	PR6	Off-sets	The draft gives an open door to biodiversity off-sets. Ecosystem services are not taken into account. Off-sets are a Pandora’s Box. It is not a good time to include them—maybe 5-10 years from now it will be ok.	<p>Offsets have been a part of EBRD’s ESP since 2008.</p> <p>We understand however that some groups feel that offsets should not be allowed, regardless of the habitat designation. Accordingly, we have strengthened EBRD’s requirements to specify that offsets should only be proposed as a last resort and that clients must apply the mitigation hierarchy.</p> <p>Additional guidance on offsets will be provided in the form of a Guidance Note.</p>
510.	PR6	Para 12-16	<p>“12. Where priority biodiversity features have the potential to be adversely impacted by the project, the client should not implement any project related unless:</p> <ul style="list-style-type: none"> <li>• There are no technically and economically feasible alternatives <b><u>in terms of location and technology, as demonstrated by an independent impact assessment including alternatives</u></b>; and</li> <li>• Appropriate mitigation measures are put in place, in accordance with the mitigation hierarchy, to ensure <b><u>a net gain of biodiversity everywhere possible and at least</u></b> no net loss <b><u>and preferably a net gain of priority biodiversity features</u></b> over the long term, or, where appropriate and supported by relevant stakeholders, the conservation of biodiversity of greater importance.” <p>“13. Notwithstanding the above, some areas affected by the project may be considered “critical habitat” by virtue of their importance of at least one of the following features: (i) the presence of highly threatened habitats; (ii) Endangered or Critically Endangered species; (iii) geographically restricted species; (iv) migratory or congregatory species; or (v) biodiversity features that are vital to maintaining the viability of biodiversity features described in this paragraph, <b><u>(vi) the area falls under IUCN category I to IV.</u></b>”</p> </li></ul>	<p>Paragraphs 12-16 have been revised; however, we have not introduced project limitations as proposed in the attached comments specific to a project’s “scale” or “size” or habitat designation.</p> <p>We feel that the new requirements included in PR 6, represent good international practices. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p>

	Ref.	Issue	Comment	Management Response
			<p>“14. Where the habitat to be adversely impacted by the project is considered to be a critical habitat, such habitat must not be further converted or degraded to the extent that its ecological integrity or biodiversity importance is compromised. Consequently, in areas of critical habitat, the client will not implement any project activities. <b><u>Under exceptional circumstances, small-scale projects delivering direct benefits for biodiversity protection may be allowed if the following conditions are met; unless the following conditions are met:</u></b></p> <ul style="list-style-type: none"> <li>• No other viable alternatives within the region exist for development of the project in habitats of lesser biodiversity value, <b><u>as demonstrated by an independent impact assessment including alternatives;</u></b></li> <li>• Any due process required under international obligations or domestic law that is a prerequisite to a country granting approval for project activities in or adjacent to a critical habitat has been complied with;</li> <li>• The potential adverse impacts, or likelihood of such, on the habitat will not impair its ability to function in the way(s) outlined in paragraph 13;</li> <li>• The project is designed to deliver net gains for critical biodiversity features impacted by the project;</li> <li>• The project is not anticipated to lead to a net reduction in the population of any Endangered or Critically Endangered species, over a reasonable time period and</li> <li>• A robust and appropriately designed, long-term biodiversity monitoring and evaluation program aimed at assessing the status of critical habitat is <b><u>realised by an independent expert and integrated into the client’s management program;</u></b></li> <li>• <b><u>Compensatory measures such as biodiversity offsets are not used in critical habitats.”</u></b></li> </ul> <p>“15. In such cases where a client is able to meet the requirements defined in paragraph 14, the project’s mitigation strategy will be described in a Biodiversity Action Plan <b><u>that shall be made public and open to a consultation with relevant stakeholders.”</u></b></p> <p><b><u>“16. In instances where biodiversity offsets are proposed as part of the mitigation strategy, the client must demonstrate through an assessment that the project’s significant residual impacts on</u></b></p>	

	Ref.	Issue	Comment	Management Response
			<del>biodiversity will be adequately mitigated to meet the requirements of paragraph 14.”</del>	
511.	PR6	No-Go Areas	PR 6 Biodiversity is a huge concern. What is referenced is such a tiny areas—it is not serious. You should include IUCN protected areas I-IV in the Exclusion List as areas in which you will not finance projects, particularly any in sectors of infrastructure or extractives. Articles 11- 17 are too weak. There is a feeling you can invest in whatever you want, which is completely unacceptable.	Paragraphs 12-18 have been revised based on stakeholder comments. In particular, the section on Protected Areas has been revised considerably to ensure that we are aligned with GIP and our MFI peers.
512.	PR6	No-Go Areas	We are not convinced of the risk based approach and relying on the mitigation hierarchy. IUCN I-IV needs to be in the Exclusion list. We are convinced you can improve the language—this is an important message that sends a clear signal to investors. There is a huge risk that you cannot monitor implementation properly and the Bank does not have a good track record. Please note that small scale SMEs do not necessarily mean they are environmentally friendly.	We note your concerns; however, we feel that the Bank’s risk based approach to biodiversity conservation and management is fully aligned good international practices and with the other MFIs and Equator Banks. Where we feel that we can do a better job, and are appreciative of your comment, is in relation to project monitoring.
513.	PR6	No-Go Areas	There ought to be No Go Zones / No Finance criteria.	We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.  Note – all projects that EBRD finances must adhere to relevant EU substantive requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).
514.	PR6	No-Go Areas	Oasis’, wetlands and other areas of scientific importance in Morocco are considered areas of high biodiversity value; are these areas banned for development?	PR 6 does not include No Go Areas; however, it does include very strict requirements related to the protection of critical habitat and priority biodiversity features. Clients must demonstrate that they can meet these “safeguards” (and compliance with the Bank’s requirements) to gain EBRD finance and/or support.
515.	PR6	No-Go Areas	PR 6 allows for projects to go forward in areas of critical habitats. This includes hydro and mining projects. We do not agree with this approach and would like to see the inclusion of No Go Zones in the ESP.	We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.  Note – all projects that EBRD finances must adhere to relevant EU substantive requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).

	Ref.	Issue	Comment	Management Response
516.	PR6	No-Go Areas	The inclusion of No Go Areas in ERD's policy does not make sense. "No Go" / "No Finance" should be based on overall risk/habitat value and the client's ability to manage these risks.	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing "no go" or "no finance" language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p> <p>Note – all projects that EBRD finances must adhere to relevant EU substantive requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).</p>
517.	PR6	No-Go Areas	EBRD should not finance large hydro projects with large reservoirs. [Our country] is not ready for them; we lack the government capacity to regulate and implement them.	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing "no go" or "no finance" language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p> <p>Note – all projects that EBRD finances must adhere to relevant EU substantive requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).</p>
518.	PR6	No-Go Areas	PR6 has been strengthened in 2014 but it does not go far enough. EBRD must change PR6 to include <i>No Go Areas</i> , specifically related to National Parks.	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing "no go" or "no finance" language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p> <p>Note – all projects that EBRD finances must adhere to relevant EU requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).</p>
519.	PR6	No-Go Areas	EBRD should include no-go areas in the Exclusion list. These should include at least IUCN categories I-II.	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing "no go" or "no finance" language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.</p> <p>Note – all projects that EBRD finances must adhere to relevant EU substantive requirements. This is clearly laid out in the ESP and PR1 (and overarching performance requirement that applies to all projects).</p>

	Ref.	Issue	Comment	Management Response
520.	PR6	Calculations	There are neglected biodiversity requirements. What is in the policy concerning biodiversity laws—do you calculate the biodiversity loss caused by projects in a specific country? Is this in the country strategy?	EBRD does not have a requirement for economic valuations for ecosystems/biodiversity.
521.	PR6	Cumulative Impact Assessment	You introduce the term, but we do not hear more. You need more reliable baseline measurements and monitoring. It is highly suspicious when you claim a high risk project has limited impacts. You need to look at the whole life cycle of the project.	The impact assessment process, including cumulative impacts, are outlined in PR1, and cross referenced in PR6.
522.	PR6	Restoration of ecosystems	Restoration of ecosystems as required may not be feasible due to e.g. fisheries development, offsets may be required to achieve “no net loss” or “net gain.”	Agreed. Offsets may be required in some circumstances but only as a last resort. We require our clients to follow the mitigation hierarchy.
523.	PR6	Restoration	<b>Biodiversity.</b> Formulations which change the meaning of the principles of biodiversity conservation are another cause of concern. This relates in particular to “biodiversity restoration”. If a project impacts critically endangered species, that is species which are already on the verge of extinction or are extremely vulnerable, it is clear that they cannot be restored in any way, or transplanted. The formulation relating to activities in specially protected areas, which includes such terms as “mitigation” to prevent consequences etc. is similarly fuzzy. The specially protected area status already assumes (depending on category) that these are areas where specific activities are prohibited, and therefore if a project describes such activities it can be implemented only outside the exclusion zones. This is a fundamental provision, enshrined in international legal documents such as the Convention on Biological Diversity, the European Landscape Convention, the international 142IUCN red list and others. In other words, it is not only an issue of practice but also of documents binding both on EU countries and on those non-EU countries which had signed and ratified these legal documents.	EBRD requires its clients to meet all relevant EU substantive requirements. This is clearly articulated in PR1 and 6.
524.	PR6	Ecosystem Services Para 9	Where applicable, the appraisal will consider the use of and dependence on natural resources <i>and ecosystem services</i> by indigenous peoples and project affected communities... [I] was curious about ecosystem services – they are included in documents such as IFC PS6 and in the EU directives but there is no mention here. Are they considered covered by the existing language already?	Commitments related to ecosystems management have been strengthened in paragraph 9.
525.	PR6	Ecosystem Services	Unlike PS6, there does not seem to be much reference as to how to address ecosystem services, though this is tightly linked to paras 3. And 9. In addition, there is little reference to the values of ecosystem services in the context of the priority and critical biodiversity features?	Commitments related to ecosystems management have been strengthened in paragraph 9.

	Ref.	Issue	Comment	Management Response
			The definitions of biodiversity features seem to be species centric - with a mention of habitats - but not much mention of the functions of particular habitats.	
526.	PR6	Ecosystem Services	<p>Some aspects of the environment might not have high biodiversity value but their loss or deterioration might have irreversible adverse implications for affected stakeholders' wellbeing. PR 6 insufficiently recognizes the dependence of people on their environment as a key determinant in identifying, assessing, and mitigating these impacts.</p> <p>PR 6 should introduce that project impacts and/ or dependencies will be assessed only on key ecosystem services. A key ecosystem service is an ecosystem service on which project impacts affect the wellbeing of the ecosystem service beneficiaries, or a service that could prevent the project from achieving planned operational performance.</p> <p>One way to achieve this goal is to adopt the mitigation hierarchy approach to achieve no loss in wellbeing derived from key ecosystem services, and where appropriate, a net gain of wellbeing. This would entail the following:</p> <ul style="list-style-type: none"> <li>• Identifying the multiple contributions of ecosystems to human wellbeing;</li> <li>• Assessing the wellbeing implications of impacts on ecosystems and identifying who losers/ winners are;</li> <li>• Mitigating impacts on key ecosystem services to at least maintain affected stakeholders' wellbeing; and</li> <li>• Meaningfully engaging the people whose wellbeing depends on key ecosystem services all through the process of identifying, assessing, and mitigating impacts on these ecosystem services.</li> </ul> <p>Additionally, PR 6 should also specify what is expected regarding assessing project dependencies on key ecosystem services:</p> <ul style="list-style-type: none"> <li>• Identifying the multiple contributions of the environment (i.e., as providing operational input or process, or influencing the physical integrity of project facilities) to project performance;</li> <li>• Assessing the potential loss in performance resulting from ecosystem change; and</li> <li>• Ensuring project performance by decreasing project's dependence on ecosystem services and engaging the people whose actions affect ecosystems on which the project depends.</li> </ul>	Commitments related to ecosystems management have been strengthened in paragraph 9.



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527.	PR6	Ecosystem Services	In [our country], there is a draft regulatory requirement that requires clients to calculate the economic value of the impacted ecosystem at the permitting stage (to identify what the client would be required to pay if there were any residual impacts following the project implementation). Does EBRD have this requirement?	No EBRD does not have a requirement for economic valuations for ecosystems
528.	PR6	Ecosystem services	We have a problem with this concept. Activities related to pollution will result in losses, like 500 ha of forest destroyed by a mine. These impacts affect companies, people. It is not important to call it ecosystem services—you could call it socio-economic calculations.	Commitments related to ecosystems management have been strengthened in paragraph 9
529.	PR6	Para 11, last sentence	As a last resort where any residual impacts remain, the client <b>may</b> consider the use of compensatory measures where appropriate, such as biodiversity offsets.  Is it “may,” or do we say “would need to consider”...the objective as stated on page 42 calls for achievement of NNL or a Net gain of biodiversity. If that is going to be achieve some type of compensation of offset will most likely be required thus the proposed change in language.	Agreed – changes made to reflect this.
530.	PR6	Biodiversity in Country Strategies	I think this area needs to be given higher profile to help inform in country strategies and not just from a E&S point of view but also from a economic development perspective.	Where the Bank’s potential operations may impact biodiversity issues, these will be highlighted in country strategies.
531.	PR6	No Net Loss	The concepts of “no net loss” (NNL) and “net gain” (NPI) as related to biodiversity are relatively new, and not surprisingly, there are no universally accepted/sanctioned mechanisms for determining the appropriateness of proposed “no net loss” and “net gain” of biodiversity measures and assessing the ultimate success of any measures that are implemented. Therefore, we recommend that the EBRD should (as is correctly stated in the second bullet of paragraph 4 of PS6) continue to aim for “no net loss” and/or “net gain” of biodiversity in the projects it supports rather than mandating attainment of ill-defined benchmarks in any biodiversity setting. Furthermore, no mention is made of the critically important socioeconomic implications associated with of “no net loss” and “net gain” of biodiversity.  We agree on the adoption of an environmental and social aspects mitigation hierarchy, but there is still limited evidence to show that a NNL or NPI can be achieved solely by applying a mitigation hierarchy. It may possible to demonstrate a precaution principle has been followed, but demonstrating its extent is difficult.	EBRD’s requirements for NNL/Net Gain represent good international practice, and mirror the requirements of the IFC – requirements that IPIECA and its members have committed to follow under the Cross Sector Biodiversity Initiative.  Additional guidance on PR6 will be provided in a Guidance Note.

	Ref.	Issue	Comment	Management Response
532.	PR6	Para 7	<ul style="list-style-type: none"> <li>• This section needs to be defined more clearly, i.e. the initial (“baseline”) condition, versus threats to biodiversity.</li> <li>• The requirement for nutrient loading analyses is not realistic for an ESIA. Most ESIA’s would struggle to gain approval to appropriate funds to do nutrient loading investigations.</li> <li>• The term “climate change impacts” needs a greater degree of definition/specificity -- on what?</li> <li>• <i>The client’s assessment should ... the effectiveness:</i> How could this be known at an early stage in a project’s lifecycle? Should this not be part of the monitoring process rather than a stipulation for inclusion in an ESIA?</li> <li>• Significance and severity: we recommend that the EBRD align its definitions of these terms with IPIECA’s Human Rights guidance which acknowledges both significance and severity. The following revised text is recommended: “The extent of the appraisal should be sufficient to characterise the issues and impacts, based on their likelihood and the significance and/or severity of the impact, and reflect the concerns of potentially affected communities and, where relevant, other stakeholders.” [previously just and]</li> </ul>	Paragraph 7 has been revised to take into account the numerous comments that EBRD received on baseline data collection.
533.	PR6	Para 8	<p>It is stated that “<i>the client’s appraisal process will characterise the baseline conditions to a degree that is proportional and specific to the anticipated risk and significance of impacts. In planning and implementing biodiversity related baseline and impact assessments, clients will refer to relevant good practice guidance, utilising desktop and field-based approaches as required. Where further investigations are needed to provide greater certainty of the significance of potential impacts, the client may carry out additional studies and/or monitoring before undertaking any project-related activities that could cause irreversible impacts to potentially affected habitats and the biodiversity that they support</i>”.</p> <p>However, we find that stating that “<i>the client may carry out additional studies and/or monitoring before undertaking any project-related activities that could cause irreversible impacts to potentially affected habitats and the biodiversity that they support</i>” leaves an opportunity for the client to decide whether they will carry out such studies or not. We find it necessary to state that “<i>the client should carry out additional studies and/or monitoring before undertaking any project-related activities that could cause irreversible impacts to potentially affected</i></p>	The client’s overall appraisal process must demonstrate that the project meets relevant EU substantive requirements as outlined in PR1. Regarding baselines studies, the appraisal process needs to characterise the baseline conditions to a degree that is proportional and specific to the anticipated risk and significance of impacts. This process will differ from project to project but the end result remains the same – compliance with PR 6. Accordingly, we are comfortable with the wording included in the ESP.

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			<p><i>habitats and the biodiversity that they support</i>” in order to prevent possible irreversible impacts to potentially affected habitats and the biodiversity they support. This change in formulation would better support the requirement under point 10.</p> <p>Also, this formulation puts the national parks and other protected areas in the same category as all other habitats. Considering that this Environmental and Social Policy is mindful of most international conventions related to the protection of biodiversity, and even though legally protected areas are mentioned in point 17, we find it necessary that in point 8 it should be stated that <i>“should the project area coincide with any part of the territory of a national park, even in a case where this national park is not a critical habitat, the relevant national nature protection body, the governing body of the national park, as well as all other stakeholders should be consulted at all stages during the process of environmental and social impact assessment, prior to the public hearings which will be carried out after the assessments have been done. The assessment of the project’s impacts on the protected area should follow Habitats Directive Para 6(3) and should be clearly distinguished from the general environmental assessment required for the ESIA”</i>.</p>	
534.	PR6	Para 8	Does the last sentence imply that field surveys should only be done if appropriate?	The client needs to demonstrate that appraisal process will characterise the baseline conditions to a degree that is proportional and specific to the anticipated risk and significance of impacts. This may include desktop and/or field studies.
535.	PR6	Para 10	Biodiversity risks are associated with potential impacts on biodiversity, not vice versa.	We are unclear what is being requested/suggested for change.
536.	PR6	Para 11	<ul style="list-style-type: none"> <li>Compensatory measures: Suggest using alternate language as this can often be interpreted as financial compensation. What happened to the Restoration level in the hierarchy...as being adopted by the CSBI</li> <li>Footnote 5: Definitions for “threatened habitats” and “vulnerable species” that are consistent with the terminologies of credible recognized independent international organizations need to be provided.</li> <li>Footnote 6: ‘GIP’?</li> <li>Objective 1 of this PR states "restore", and here "rehabilitate" is used. It is important to recognize that these words refer to different concepts.</li> </ul>	Additional guidance on compensation and offsets will be included in a PR 6 Guidance Note.

	Ref.	Issue	Comment	Management Response
537.	PR6	Para 11	It is stated that “ <i>where priority biodiversity features are identified as part of the appraisal process, the client will seek to avoid impacts on such priority biodiversity features in accordance with the mitigation hierarchy. When avoidance of impacts to priority biodiversity features is not possible, measures to minimise and/or mitigate these impacts and rehabilitate impacted biodiversity should be implemented. As a last resort where any residual impacts remain, the client may consider the use of compensatory measures where appropriate, such as biodiversity offsets.</i> ”	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features and critical habitat represent good international practices, especially as they relate to the limitations placed on projects that could impact these types of habitats/biodiversity.</p> <p>PR 6 also stresses that it is the duty of the client to demonstrate that they can meet these very stringent conditions to be compliant with the Bank’s requirements for funding or support.</p> <p>Note, PR6, as well as all of the PRs stresses the need to follow the mitigation hierarchy, which points first to impact avoidance as the priority in project design, construction and implementation.</p>
538.	PR6	Invasive species	Requirements for “eradication measures” for invasive species should be included in the revised PR6.	To be consistent with the IFC, PR6 has been revised to include this measure.
539.	PR6	Para 14	<p>The first sentence of this point states that “<i>where the habitat to be adversely impacted by the project is considered to be a critical habitat, such habitat must not be further converted or degraded to the extent that its ecological integrity or biodiversity importance is compromised</i>”.</p> <p>This formulation leaves room for actual converting or degrading of the critical habitat mentioned, as long as the extent of converting or degrading is not detrimental. However, EBRD should not be investing in infrastructure projects with adverse impacts located in critical habitats under any condition. Therefore, we propose completely removing the part of the sentence which states “<i>to the extent that its ecological integrity or biodiversity importance is compromised</i>” and having the sentence state that ““<i>where the habitat to be adversely impacted by the project is considered to be a critical habitat, such habitat must not be further converted or degraded</i>”.</p>	<p>We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features and critical habitat represent good international practices, especially as they relate to the limitations placed on projects that could impact these types of habitats/biodiversity.</p> <p>PR 6 also stresses that it is the duty of the client to demonstrate that they can meet these very stringent conditions to be compliant with the Bank’s requirements for funding or support.</p> <p>Note, PR6, as well as all of the PRs stresses the need to follow the mitigation hierarchy, which points first to impact avoidance as the priority in project design, construction and implementation.</p>
540.	PR6	Para 15	“or similar management plan”? Why specifically is a BAP specified? From our industry’s experience it is much better if mitigation measures are integrated in a project’s risk action plan; this allows for greater visibility of these measures throughout a project’s organization, especially with upper management.	Agreed – EBRD is flexible in its approach; however, our experience shows that capturing these long term commitments in stand-alone BAP is the best way to manage these issues.
541.	PR6	Para 16	Regarding the term “mitigation strategy” How can companies provide assurance on this? This should be part of monitoring to determine the effectiveness of implemented measures and taking corrective action if the measures are not working as designed. At the outset companies are not going to be able to demonstrate that mitigation measures (including	We agree--this is why clients must demonstrate that they incorporate adaptive management into their overall management strategy.

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			biodiversity offsets) meet initial requirements.	
542.	PR6	Para 17	<p>It is stated that “<i>where the project occurs within or has the potential to adversely affect an area that is legally protected or internationally recognised or designated for protection, the client must identify and assess potential project-related impacts and apply the mitigation hierarchy so as to prevent or mitigate impacts from projects that could compromise the integrity, conservation objectives or biodiversity importance of such area</i>”.</p> <p>As stated above, similarly to critical habitats, we strongly believe that areas nationally or internationally recognized or designated for protection are a no-go zone for infrastructure projects with adverse impacts on the environment. We base this statement on a written analysis of the IUCN Protected Area category system (24.01.2014, in attachment) where it is clearly stated that any activity not compatible with the primary management objective of the protected area (national park category II) are to be avoided. Therefore we do not support even considering applying of mitigation measures as we think that very often even the most advanced methods of mitigation cannot repair or return nature to the initial state. The EBRD should fully commit to ensuring that protected areas are not harmed with its finances, by simply restricting its activities in such areas.</p>	We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.
543.	PR6	Para 17	<p>[Add to end of 17] EBRD will not finance any projects that take place within or which will significantly degrade a World Heritage site.</p> <p>I think it is important to consider a stand against development in World Heritage sites. There seems to be a general feeling that projects will go forward in PAs given government acquiescence but that it is important to maintain the integrity of WH sites. This would basically strengthen the prohibition outlined on page 9.</p>	We feel that the new requirements included in PR 6, specifically as they relate to priority biodiversity features, critical habitat and protected areas, are very stringent and represent good international practices. Accordingly, we do not support introducing “no go” or “no finance” language in PR6. Moreover, this risk based approach to biodiversity conservation and management is fully aligned with the other MFIs and Equator Banks.
544.	PR6	Para 31 Biomass	Also include text to highlight the potential impacts of this on commodity prices and related to this community impacts.	This is not something we wish to include in PR6.
545.	PR6	Scope	Why are we only talking about animals wellbeing when referring to biodiversity (based on the presentation/summary of key changes) - why not also plants and land?	This is not the case. Plants, land etc. are covered under the biodiversity specific requirements included in PR6.
546.	PR6	Animal Welfare	We appreciate the requirements relating to Animal Welfare. This is European money going outside of EU to finance projects and it should ensure that competition is on a level playing field. However, animal protection is also part of sustainable development. You have it in a list	We have titled the section Crop and Livestock Production.

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			alongside crops. Animals are sentient beings—they are not like potatoes and corn.	
547.	PR6	Animal Welfare suggested edits	<p><b>Paragraph 1:</b> While we appreciate the comprehensive definition of “living natural resources,” we believe that PR 6 should clarify its use of “sustainable management” in this context, specifically for farm animals, in a way that aligns with the rest of the PR. We therefore suggest the following edit:</p> <p>This Performance Requirement (“PR”) recognises that the conservation of biodiversity<sup>1</sup> and sustainable <b>and humane</b> management of living natural resources<sup>2</sup> are fundamental to environmental and social sustainability.</p> <p>Further, in the footnote defining “living natural resources,” livestock, including farmed fish, are referred to as being in the same category as crops. In view of the fact that animals are individual sentient creatures, they should be referred to in a distinguishing manner. Perhaps a final sentence could be added to the footnote, such as:</p> <p><b>Animals and fish, whether wild or farmed for human consumption do of course require particular protection in view of their sentience.</b></p> <p><b>Performance Requirement 6, Paragraph 4</b></p> <p>We have a parallel suggestion for paragraph 4’s third bullet point:</p> <p><input type="checkbox"/> To promote good international practices (“GIP”) in the sustainable <b>and humane</b> management and use of natural living resources.</p> <p><b>Paragraph 19:</b> This section should be entitle “Sustainable <b>and Humane</b> Management of Living Natural Resources,” in line with our previous comments. Importantly, paragraph 19’s description of applicable projects should include those that involve general corporate finance, working capital or equity financing for a multi-site company, which holds as a significant business focus “living natural resources” (as defined by the PR). Excluding this creates the potential of omitting significant projects from meeting the goals of the ESP. Therefore, we suggest the following change to footnote 14:</p> <p>Projects that include crop or livestock production, natural or plantation forestry, aquaculture or fisheries, and production and use of biomass for energy or biofuel production are subject to this PR. <b>This includes those project that involve general corporate finance, working capital or equity financing for a multi-site company, which holds as a significant business focus “living natural resources” (as defined by the PR).</b></p>	<p>Whilst we appreciate the proposal to introduce the word “humane” and/or “animal welfare conditions” throughout PR6 when referring to the sustainable management of living natural resources, we feel that these are already addressed through the current requirements.</p> <p>We have incorporated your suggestion regarding paragraph 26: <i>Clients involved in the farming, transport and slaughter of animals for meat or by-products (e.g. milk, eggs, wool) will employ good international practices and relevant EU animal welfare standards in animal husbandry techniques</i></p>

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			<p><b>Paragraph 20</b> In line with previous comments, we suggest the following change: Clients who are engaged in such activities will manage living natural resources in a <b>humane and</b> sustainable manner, through the application of GIP, relevant industry-specific sustainable management practices, and the standards contained in relevant EU law, as applicable at project level.</p> <p><b>Paragraph 22</b> In line with previous comments, we suggest the following change: Clients with projects involving the use of living natural resources will assess the sustainability <b>and animal welfare conditions</b> of the resource and its use ...</p> <p><b>Paragraph 23</b> While paragraph 24 provides some balance, paragraph 23 is only focused on avoidance of negative impacts rather than also seeking positive outcomes, as is consistent with the ESP. Therefore, we suggest the following change: Clients involved in the production <b>of</b> animals should ensure that they are employing GIP to avoid or minimise negative impacts<sup>6</sup> and resource consumption, <b>as well as to maximise positive impacts</b>.</p> <p><b>Paragraph 24</b> [We] welcome the inclusion of EU animal welfare standards into the ESP as an initial step. There are also a range of practices that cause animal suffering, such as intense confinement and some breeding practices that are still permitted in the EU and we would also welcome measures to prevent them from being applied through EBRD funding. Further, current EU Directives and Regulations on animal welfare are at least partly based on the legal recognition of animals as “sentient beings.” It would therefore be helpful if a similar recognition was built into this section.</p> <p>Including EU animal welfare standards into the ESP constitutes an important step forward for the welfare of farm animals. However, EBRD clients should employ EU animal welfare standards not only regarding husbandry, but also regarding transport and slaughter of animals, as these are important aspects of animal welfare as well (Council Regulations 1/2005/EC and 1099/2009/EC). Further, milk, eggs and other animal products are among the primary purposes of farm animal business and cannot be termed “by-products.” Therefore, we propose the following changes: As animals are recognised as “sentient beings” in EU law, clients involved in the farming, <b>transport and slaughter</b> of animals for meat</p>	

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			<p>or by <b>other animal</b> products (<i>e.g.</i> milk, eggs, wool) will employ good international practices and relevant EU animal welfare standards in animal husbandry techniques.</p> <p><b>Performance Requirement 6, Paragraph 31</b> As biomass, in particular, can create conflicts with resource uses and other sustainable development goals that may be beyond the scope of the categories listed, we suggest the following change: “Clients involved in the production and use of biomass and biofuels should minimise the use of, and impacts on, land, water and other resources needed to produce each unit of energy, <b>including avoiding conflicts with other parts of the ESP</b>. Development of biomass resources must minimise adverse effects on biodiversity <b>and animal welfare</b>, and be undertaken in accordance with internationally recognised sustainability guidelines for biomass and biofuel production and supply.”</p> <p><b>Paragraph 33</b> In line with previous comments on animal welfare, we suggest the following change regarding supply chains: Clients should give preference to purchasing living resources certified to internationally recognised principles and standards of <b>humane and</b> sustainable management, where available. Where this is not available, clients should identify plans to do so within a reasonable timeframe.</p>	
548.	PR6	Animal Welfare	<b>Animal welfare</b> – introduction of GIP and EU standards welcomed, but it is unclear and vague and should be stricter.	Additional guidance on the implementation of animal welfare requirements will be included in a Guidance Note.
549.	PR6	Animal Welfare	<p>Requirements related to animal welfare have been adopted to reflect current practice aligned with EU requirements.</p> <p>How strictly is this commitment phrased and expected to be applied? Is there room for step-wise compliance? In practice, we have found that the practicability of comprehensively implementing EU requirements can be difficult for projects in some markets. For example, a local company was developing a poultry farm for egg production in Mongolia. They felt that eggs were a fairly new aspect to the market and bring substantial nutritional benefits to society. They were working to improve the equipment and standards across the relatively immature industry, working with government to improve regulations and introducing international technologies in a modern facility. Climatic differences meant added costs for larger cages and given the limited market, the local company was cautious that customers’</p>	EBRD works closely with our clients to ensure that their projects are structured to meet the Bank’s PRs, including EU substantive standards over a reasonable time with commitments in legal documentation, such as Environmental and Social Action Plans.



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			<p>willingness to pay higher costs to compensate for full compliance with EU-standards of bird cages would impose a significant cost restriction on their business plan. Efforts were a significant improvement on current practices, but did not fully reach the EU requirements. Flexibility in the review process to allow engagement with projects that show significant improvement and sequential planning towards achieving EU standards over time may allow for a more widespread improvement of animal treatment in projects in emerging markets and allow local companies to work with EBRD to simultaneously build market demand and awareness alongside implementing increasingly higher standards.</p> <p>Modify text to the effect: ‘Individual aspects of animal welfare may require consideration of local conditions. Where markets are not well developed and face significant gaps to EU standards, a project’s sequential and active planning towards achieving EU standards can serve as qualification’.</p>	
550.	PR6	Animal Welfare	<p>The introduction of animal welfare regulations in the PR6 is a welcome development. We see it as a step towards recognition of animals as sentient beings - the direction taken by the EU long time ago, presented in the constantly developing EU legislation and policies on animal welfare. EBRD policy should further distinguish between crops and livestock production as animals are sentient beings and deserve better treatment. However, to ensure that the performance requirement on animal welfare is successfully implemented in the projects, a number of clarifications and more concrete commitments in the policy are still needed. The major concerns are vague terminology and scope of application limited to farming: (1) it is not clear what are good international practices and how they are defined – what practices are considered good and by whom, (2) it is unclear what is “relevant EU animal welfare standards” and whether the term includes all the EU animal-related legislation. (3) it should be made clear that application of standards should be required not only for “clients involved in farming” but also those that might be involved in transportation and/or slaughtering only. Such formulations suggest that bank is leaving it up to its clients to decide which practices/standards to follow as there are at least 8 EU Directives and Regulations in this field introducing minimal requirements at different stages (keeping, transporting, slaughtering) and for different animals. Furthermore, the EU legislation in this field is actively developing to cover all aspects of animal welfare, and bank should ensure newly adopted EU laws</p>	Additional guidance on the implementation of animal welfare requirements will be included in a Guidance Note.

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			become applicable for EBRD projects. <b>Recommendation:</b> We suggest that the EBRD clearly spells out a requirement on the application of EU legislation in PR 6 by formulating that “all EU laws, currently in force or adopted in future, on animal welfare should be applicable for the projects financed by the EBRD”. This is important for ensuring European food production businesses do not move their production capacities (meaning also jobs) into neighbouring states in order to take advantage of lower environmental and animal welfare standards there.	
551.	PR6	Invasive Species	Requirements for “eradication measures” for invasive species should be included in the revised PR6.	This have been introduced in paragraph 19
552.	PR6	Pesticides	PR6 would be strengthened if it included a list of prohibited pesticides ( <i>see ESP 2008, PR3 para 22</i> ).	This has been re-introduced from the 2008 ESP. Note <i>Pesticide Use and Management</i> have been moved to PR3 as in the 2008 ESP.
	<b>PR7</b>			
553.	PR7	Definition of IP	[What definition of IP is EBRD using?] Does EBRD consider the Amazigh are IP? [EBRD should be clear in PR7 about who is covered under the definition of IP.]	EBRD has a definition of IP in its PR which can be found in paragraph 11. Currently technical studies and consultations are being undertaken to determine whether certain groups of people would fall within the remit of PR7.
554.	PR7	Definition of IP	Definition of IPs needs to be updated and revised – include 5 criteria for and types of IPs in line with the UN Declaration on the Rights of IPs.	Five criteria are now included.
555.	PR7	Definition	The draft policy does not respect the principle of self-identification of indigenous peoples, instead making their recognition as a distinct indigenous group dependent on ‘recognition by others’. The draft policy recognises that indigenous peoples may have been forcefully removed from their lands, but requires that removal must have happened ‘within the concerned group members’ lifetime’, in order for those peoples to continue to be identified as indigenous. There is no justification for such a limitation.	The draft did include the principle of self-identification but the wording has now been changed to clarify that it was not solely dependent upon the recognition of others. The wording has been changed to make it clear that the removal did not need to have occurred in the person’s life time, as that would be an unnecessary restriction.
556.	PR7	Definitions	There are some issues with the definition of IPs requiring recognition of their status by “others”. Who are these “others”?	Please see previous response.
557.	PR7	Definition	<b>Definition of Indigenous Peoples</b> Paragraphs 8-11 should be repositioned in the text of Performance Requirement 7 to provide the reader with a clear understanding of the EBRD’s interpretation of the term “Indigenous Peoples” from the outset. Reference to the International Finance Corporation’s definition of “indigenous and vulnerable peoples” would be advantageous (e.g., via a footnote).	We believe our <i>definition</i> is clear.

	Ref.	Issue	Comment	Management Response
558.	PR7	Terminology	There is much use of the word “vulnerable” to describe indigenous peoples and other groups. The term should be avoided as it is victimising and disempowering. “Discriminated” is preferable as it emphasises the responsibility of the state.	The word is not being used in a victimising way but to make clear that where indigenous peoples may be disproportionately affected, not by virtue of their relationship with the government but by virtue of their lifestyle and place of living.
559.	PR7	General	There is virtually no mention of ethnic, religious and linguistic minorities. Ethnic (but not religious or linguistic) communities are included as potential vulnerable groups in a number of paragraphs but this is unlikely to capture the specific measures needed. The <i>UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities</i> states “Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live”.	Guidance notes are to be prepared.
560.	PR7	Social Determinants of Health	Many of the health issues described above for bio-diversity are also relevant for indigenous people. - Individual, household or community stress, particularly if people have different perceptions about the fairness of the process and/or adequacy of engagement in project decision-making.	Noted and text incorporated.
561.	PR7	Para 4, 24	<b>Incorrect Statements re Indigenous Peoples</b> The second sentence of paragraph 4 in Performance Requirement 7 is not correct – consequently, it should be reworded as follows: “ <i>Some</i> Indigenous Peoples are no longer involved solely in customary subsistence livelihoods nor can their identity be associated solely with the pursuit of such traditional livelihoods and lifestyles in all instances/locations.” The first sub-bullet under the sixth bullet in paragraph 24 is also not correct – therefore it should be reworded as follows: “ <i>Some</i> Indigenous Peoples live in mixed communities with non-Indigenous Peoples;”	Wording changed to say that “Indigenous People <i>may</i> live in mixed communities with non-Indigenous Peoples;”
562.	PR7	Para 4	We suggest amending to: “ <i>Some</i> Indigenous Peoples are no longer involved solely in customary subsistence livelihoods nor can their identity be associated solely with the pursuit of such traditional livelihoods and lifestyles in all instances/locations.”  Also suggest rewording the first sub-bullet under the sixth bullet in paragraph 24 to: “ <i>Some</i> Indigenous Peoples live in mixed communities with non-Indigenous Peoples;”	Please see previous response.
563.	PR7	Para 20	<b>“Time-Bound Plan”</b> Use of the non-descript/non-defined term “time-bound plan” in paragraph 20 adds no value and carries no certainty of long-term responsibility – therefore, this term should be deleted.	All action plans are time bound and an IPDP is no exception.

	Ref.	Issue	Comment	Management Response
564.	PR7	Reinstatement Para 27	<p><b>Reinstatement of Project-Affected Land</b> In paragraph 27 of Performance Requirement 7, the following statement is made: “... reinstate any land used to its previous status.” This reclamation benchmark is not universally attainable (even with the expenditure of unlimited funds), and in those situations when it is, tens to hundreds of years may be needed until a piece of reclaimed land attains its “previous status” (e.g., in an old growth forest setting).</p> <p>While it is agreed that project-altered/-improved lands should be reclaimed in a timely manner to a stable and (ecologically) appropriate state after they are no longer required, in some instances local communities (including Indigenous Peoples’ communities) do not want a project to reclaim a piece of land that has been altered/improved – for example, a community may want to retain “as is” an area that was cleared of trees by a project so that crops can be grown on it. Therefore, it is recommended that the statement above be reworded as follows: “...reinstate any land used to a stable and ecologically appropriate status or to a state agreed to with the local community that facilitates its beneficial and sustained use.”</p>	Wording amended to ‘... and reinstate any land used to a stable and ecological appropriate status, agreed with the local community.’
565.	PR7	Para 27	<p>In paragraph 27 of Performance Requirement 7, the following statement is made: “... reinstate any land used to its previous status.” This reclamation benchmark is not universally attainable (even with the expenditure of unlimited funds), and in those situations when it is, tens to hundreds of years may be needed until a piece of reclaimed land attains its “previous status” (e.g., in an old growth forest setting).</p> <p>While it is agreed that project-altered/-improved lands should be reclaimed in a timely manner to a stable and (ecologically) appropriate state after they are no longer required, in some instances local communities (including Indigenous Peoples’ communities) do not want a project to reclaim a piece of land that has been altered/improved – for example, a community may want to retain “as is” an area that was cleared of trees by a project so that crops can be grown on it. Therefore, it is recommended that the statement above be reworded as follows: “...reinstate any land used to a stable and ecologically appropriate status or to a state agreed to with the local community that facilitates its beneficial and sustained use.”</p>	Please see the re-drafted text in the response above.
566.	PR7	Consent	<p><b>“Consent” in the Context of FPIC</b> In paragraph 30 (and other locations in Performance Requirement 7 – e.g., paragraphs 32, 34, 36), the “consent” expectation as it relates to FPIC is articulated, with a definition of “consent” being provided in footnote 6 – it is important to note that the EBRD’s definition of “consent” is inconsistent with other</p>	There is no universal definition of “consent”.

	Ref.	Issue	Comment	Management Response
			<p>definitions of this term in the context of Indigenous Peoples’ interactions (see for example, IFC Performance Standard 8 [2012]). Expectations regarding the “consent” benchmark related to Indigenous Peoples interactions continue to vary at the present time, with a common interpretation being consent to the nature of a project’s (Indigenous Peoples) engagement process (versus consent to a project itself).</p> <p>In practice, it is commonly understood that “consent” does not (and cannot) constitute a veto by an Indigenous Peoples group/organization (or any other group/organization for that matter) of a project – this reality must be clearly and unambiguously stated somewhere in Performance Requirement 7 (e.g., in paragraph 30 and/or in footnote 6).</p>	
567.	PR7	FPIC	<p>As we expected, FPIC is highlighted as a requirement in certain circumstances (paragraph 30 and subsequent paragraphs). However, it is not completely clear what EBRD means by “consent” or how they would go about evaluating whether a client had actually obtained it, especially in controversial situations. For example, regarding paragraph 30 on page 55, footnote 6 states that “Consent refers to the process whereby the affected community of Indigenous Peoples, arrive at a decision, in accordance with their cultural traditions, customs and practices, as to whether to become involved in the project.” It is therefore possible that their decision-making process could exclude the views of certain groups – e.g. women – or be made by only a very small number of leaders. Is consent or rejection made in this way really representative or fair? This approach could in fact be in conflict with EBRD’s own statement about the objectives of PR 7: “To recognize the specific needs of women and girls (and Indigenous Peoples) by addressing gender issues and mitigating potential disproportionate gender impacts of a project.”</p> <p>QUERY 1: Please provide guidance on the questions above, including information about ‘what consent looks like?’ – otherwise clients must be directed towards guidance produced by some other recognized independent international body.</p> <p>QUERY 2: Please clarify whether paragraph 32 means that FPIC is required even if only minor adverse impacts are envisaged and they can be successfully mitigated: “If the client proposes to locate the project on, or commercially develop natural resources located within customary lands under use, and adverse impacts can be expected on the livelihoods, or cultural, ceremonial, or spiritual uses that define the</p>	<p>EBRD has had this requirement since 2008 and the wording has not been changed,</p> <p>There is no universal definition of Free, Prior and Informed Consent (FPIC).</p> <p>EBRD intends to work with IP groups and other IFIs to provide some further guidance.</p> <p>Yes, following the principles of the United Nations Declaration on the Rights of Indigenous Peoples if there are to be impacts on traditional land, FPIC is required.</p>

	Ref.	Issue	Comment	Management Response
			identity and community of the Indigenous Peoples, the client will respect their use as follows by ... Entering into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and consent as a result of the negotiation.”	
568.	PR7	Para 32	In the fourth bullet of paragraph 32 of Performance Requirement 7, it is stated that it is a client’s responsibility to inform Indigenous Peoples about their legal (land) rights – more rightly, this is the responsibility of a host-country government.	EBRD believes it is the responsibility of its client to do this as well.
569.	PR7	Informing about rights	<b>Informing Indigenous Peoples About Their Rights</b> In the fourth bullet of paragraph 32 of Performance Requirement 7, it is stated that it is a client’s responsibility to inform Indigenous Peoples about their legal (land) rights – more rightly, this is the responsibility of a host-country government.	Please see above response.
570.	PR7	Indigenous people	The existence of indigenous populations is not always considered/understood by financial institutions (e.g. World Bank). Will the review on who may be considered indigenous groups be attached to PR7? How will it be made public?	The review will not form part of the PR and is part of an on-going discussion.
571.	PR7	Miscellaneous Comments	<p><b>Paragraph 3</b> : “It is further recognised that the roles of men and women in indigenous cultures are often different from those in the dominant groups, and that women and their children have different roles and have frequently been marginalised both within their own communities and as a result of external developments and may have specific needs.”</p> <p>The wording here is vague, and there is an implication - particularly through the word ‘frequently’ - that indigenous communities are in some way worse indiscriminating against women than majority communities. There is no evidence that this is the case. An improvement might be: “It is further recognised that the roles of men, women and children in indigenous cultures may be different from those in the dominant groups; both men and women may experience differential treatment both within their communities and within broader society, which may amount to discrimination. Children may be particularly marginalised due to their status as children, and also experience discrimination due to their indigenous status. All groups may have specific needs.”</p> <p><b>Paragraph 5</b>: “To recognise the specific needs of women and girls of Indigenous Peoples by addressing gender issues and mitigating potential disproportionate gender impacts of a project;” – a better formulation might be: “To recognise the specific needs of men, women and children within Indigenous Peoples by addressing gender issues</p>	<p>This is not the intention of the wording. In fact, in many of the IP groups within EBRD’s countries of operations, it is the women who are more dominant.</p> <p>Text has been amended to ensure EBRD’s intended meaning is clearer.</p> <p>Text amended.</p> <p>Noted and text amended.</p>

	Ref.	Issue	Comment	Management Response
			<p>and mitigating potential disproportionate gender impacts of a project;” (some initiatives can adversely impact on men more than women, for example)</p> <p><b>Paragraph 9</b> :It would be important to delete “minority” here, as indigenous peoples’ advocates generally do not accept this term being applied to them. The term may be understood to imply that the community must constitute a numerical minority which is not always the case. In regard to “and recognition of this identity by others”, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) states that “Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.” The United Nations Human Rights Committee has stated that “The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria” (Human Rights Committee General Comment No. 23: The rights of minorities (Art. 27): . 04/08/1994. CCPR/C/21/Rev.1/Add.5), which clearly precludes any arbitrary recognition of identity by other parties including the state. In a General Comment, the United Nations Committee on the Elimination of Racial Discrimination stated that identification of membership of racial or ethnic groups “shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.” (Committee on the Elimination of Racial Discrimination, General Recommendation 8, Membership of racial or ethnic groups based on self-identification (Thirty-eighth session, 1990), U.N. Doc. A/45/18 at 79 (1991)).</p> <p><b>Paragraph 9</b> (footnote 2) – The footnote indicates that an indigenous people may be recognised for the purposes of the PR even if it has lost collective attachment to habitats or ancestral territories due to forced severance, but that this forced severance must have taken place “within the concerned group members’ lifetime”. There is no legal basis for a limitation of this sort. UNDRIP states that: “<i>Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.</i> (Art. 28)”</p> <p>UNDRIP does not note that such right to redress is extinguished within</p>	<p>Please see response to 505. Text amended.</p>

	Ref.	Issue	Comment	Management Response
			<p>the lifetime of community members. In <i>The Mayagna (Sumo) Awas Tingni Community v. Nicaragua</i>, the Inter-American Court of Human Rights found that: “<i>the Mayagna Community has communal property rights to land and natural resources based on traditional patterns of use and occupation of ancestral territory. These rights “exist even without State actions which specify them”. Traditional land tenure is linked to a historical continuity, but not necessarily to a single place and to a single social conformation throughout the centuries. The overall territory of the Community is possessed collectively, and the individuals and families enjoy subsidiary rights of use and occupation;</i>” The Inter-American Court of Human Rights, in the case of <i>YakyeAxa Indigenous Community v. Paraguay</i>, found that for indigenous peoples, the possession of land was a matter of cultural and historical memory handed down through generations: “<i>Despite the subtlety of the signs of possession, sites periodically settled, watering places, water deposits, hunting territories, gathering or fishing areas, almost imperceptible cemeteries, and so forth, are an indelible part of the historical memory of these peoples. This historical memory, inseparably associated with geography, is the main sign of traditional possession.</i>”</p> <p><b>Paragraph 20</b> :The PR states: “The IPDP will systematically assess projects’ differentiated impact on men and women and will include actions to address differentiated impacts on groups in the community.” It would be better to use the language in paragraph 24 hence: “The IPDP will systematically assess projects’ differentiated impact on gender, generational and excluded groups, and will include actions to address differentiated impacts on groups in the community.”</p> <p><b>Paragraph 25</b> :Although it is positive to allow for verbal grievance mechanisms, it is essential that such proceedings be recorded in order for proper records to be kept.</p> <p><b>Paragraph 30</b> :It is positive that, for a specified list of activities, the free prior and informed consent of indigenous peoples must be obtained. However UNDRIP – which should be considered to be the definitive authority in this question – extends the list to include the following: “<i>States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.</i> (Art. 19)”, “<i>States shall take effective measures to ensure that no storage or disposal of hazardous materials</i></p>	<p>Noted and text amended.</p> <p>The text does not allow for solely verbal grievance mechanisms but does allow for there to be a greater reliance on verbal proceeding.</p> <p>Wording amended to reflect that it was not the intended meaning to suggest that the project would go ahead in these circumstances without FPIC/an agreement.</p>



	Ref.	Issue	Comment	Management Response
			<p><i>shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. (Art. 29(2))</i></p> <p><b>Paragraph30 (footnote 6):</b> This wording is highly problematic as it suggests that the project could go ahead without the free prior and informed consent of the community, simply that the community would not be participating in it. It would be preferable to use the wording from Operational Policy 4.10 – Indigenous Peoples, of the World Bank: “The Bank pays particular attention to the social assessment and to the record and outcome of the free, prior, and informed consultation with the affected Indigenous Peoples’ communities as a basis for ascertaining whether there is such support. The Bank does not proceed further with project processing if it is unable to ascertain that such support exists.”</p> <p><b>Para32 (footnote 7) :</b> Even though this list is a non-exhaustive one, for clarity it would be useful to add “environmental damage to traditional or customary lands under use” as this is one of the most common adverse impacts.</p> <p><b>Paragraph 32:</b> The terminology “free, prior and informed consent” should be used at all times, hence it is important for paragraph 32 to state: “Entering into good faith negotiation with the affected communities of Indigenous Peoples, and document their <b>free, prior and</b> informed participation and consent as a result of the negotiation.”</p> <p>“Offering affected communities of Indigenous Peoples, at the minimum, compensation and due process available to those with full legal title to land in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities”</p> <p>It would be important to remove the words “available to those with full legal title to land”; UNDRIP does not limit indigenous peoples’ land rights to land to which the communities possess legal title (see Art. 26(2): “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”)</p>	<p>Since this footnote refers to the section entitled impact on traditional or customary land, the bank believes this is clear and no need to amend text.</p> <p>Noted and text amended.</p> <p>Noted and text amended,</p>
572.	PR7	Resettlement	<p><b>Resettlement of Indigenous Peoples in the Absence of Consent</b></p> <p>The second sentence of paragraph 34 of Performance Requirement 7 reads as follows: “When relocation is unavoidable, the client will not carry out such relocation without obtaining free, prior and informed consent for it from the affected Indigenous Peoples’ communities as a</p>	

	Ref.	Issue	Comment	Management Response
			<p>result of good faith negotiations.”</p> <p>In those host-countries where land expropriation legislation is in place, Indigenous Peoples may be able to be legally removed from their land even though their consent for the relocation may not have been obtained – this is the essence of imminent domain. Obviously, such an action would only be undertaken after all attempts to negotiate a suitable agreement (i.e., obtain consent) have been exhausted by a client and the host-country government. Therefore, it is recommended that the second sentence of paragraph 34 should be reworded as follows: “When relocation is unavoidable, the client will attempt to obtain the free, prior and informed consent for it from the affected Indigenous Peoples’ communities by way of good faith negotiations. In the absence of obtaining consent, a resettlement program in accordance with the host-country’s land expropriation legislation and GIP will be undertaken.”</p>	EBRD will not consider financing a project where there is resettlement of indigenous peoples without their FPIC.
573.	PR7	Applicability	<p>PR 7 talks about the collective attachment to lands, and the footnote mentions people being severed from the land during their lifetime. However, what about their children—would they not be considered IPs, just because they are one generation removed from tribal lands? This timing seems too strict.</p>	Please see earlier response.
574.	PR7	Terminology	<p>PR7 - Revise independent expert requirements for assessments of impacts on IPs – Russia has specific requirements for ethnographic experts (not sociologists/social experts/scientists).</p>	Works fine in English, this could be a translation issue. Will check in final draft.
575.	PR7	Editing suggestions	<p><b>Page 80, paragraph 2:</b> we propose a minor revision to the last sentence:  They are particularly vulnerable if their lands and resources are transformed <u>or</u> encroached upon by those who are not members of their communities.  The provisions of the UN Declaration on the Rights of Indigenous Peoples and ILO Indigenous and Tribal Peoples Convention (1989), No. 169 complement each other. On <b>page 81, paragraph 5</b> at the end of bullet point 6, we suggest a new footnote reference (3) be added as follows:  The ILO Indigenous and Tribal Peoples Convention (No. 169) covers a wide range of issues pertaining to indigenous peoples, including land, employment, health and social security and customary law. Consultation and participation constitute the cornerstone of the Convention.</p> <p><b>Page 83, paragraph 19</b> under “Avoidance of Adverse Effects”: we propose that the last sentence read as follows:</p>	<p>Noted and text amended.</p> <p>Noted and text amended</p>

	Ref.	Issue	Comment	Management Response
			<p>When avoidance of adverse effects is not feasible, the client will minimise, mitigate <u>and</u> provide fair compensation for these impacts.</p> <p><b>Page 84, paragraph 20</b> under “Preparation of an Indigenous Peoples Development Plan”: we suggest that the fourth bullet point in Section II read as follows: “Measures to <u>participate in</u> the project benefits, <u>including</u> development opportunities.</p> <p><b>Page 84, paragraph 21</b> under “Information Disclosure, Meaningful Consultation and Informed Participation”: we propose that the last sentence read as follows: The engagement process will ensure their meaningful consultation in order to facilitate their informed participation on matters that affect them directly, proposed mitigation measures, the <u>participation in the project benefits, including development opportunities</u>, and implementation issues.</p> <p><b>Page 87, paragraph 32</b> under “Impacts on Traditional or Customary Lands under Use: we propose that the fourth bullet point be revised as follows: Informing the affected communities of <u>Indigenous Peoples of their rights with respect to these lands under national laws, including any national law recognising customary rights or use, and under relevant ratified ILO Conventions</u>.</p> <p><b>Page 87, paragraph 32:</b> we propose that the fifth bullet point read as follows: Offering affected communities of Indigenous Peoples, at the minimum, <u>fair</u> compensation and due process available to those with....</p>	<p>Noted and text amended</p> <p>Noted and amended.</p> <p>In developing PR7, EBRD was mindful of a number of requirements regarding IPs, including requirements on meaningful consultation.</p> <p>Noted and text amended</p>
576.	PR7	FPIC	Indigenous People (of the North) – EBRD ESP 2008 reflected the best practice in the world (FPIC), and also in terms of climate change and human rights based approach.	Thank you!
577.	PR7	FPIC	FPIC – not agreed internationally, no monitoring of the efficiency of implementation in practice, a number of conferences to clarify what FPIC means – EBRD needs to take part in this work.	Agreed and this shall be initiated after the approval of the policy.
578.	PR7	Guidance Note	There are currently 47 recognised IPs in Russia – EBRD guidance note (2010) mentions only 45 IPs, needs to be updated.	Noted. Guidance note shall be updated.

	Ref.	Issue	Comment	Management Response
579.	PR7	Resettlement of Indigenous People	You need an adequate or similar section to PR5 in PR7 for indigenous people and more prominent legal rights.	The bank believes that this is not necessary as the two PRS would be applied simultaneously.
580.	PR7	Consultation	Concept of impacts on IPs – not only impacts but also timeline/duration of the impacts, otherwise they are not understandable to IPs	Text has been amended to reflect this.
581.	PR7	IP Stakeholders	Large hydropower projects are problematic especially in the Far-East of Russia, EBRD should consult and work with IPs on those projects.	Noted.
	<b>PR8</b>			
582.	PR8	Para 2	<p><b>“Disintegration of a Community” and “Endangering the Cultural or Economic Survival of Communities”</b></p> <p>The final sentence in paragraph 2 of Performance Requirement 8 reads as follows: “If the environment is crucial for maintaining traditional skills, knowledge and beliefs, any relocation, detachment or significant change in the environment could trigger the loss of traditional knowledge, beliefs and/or loss of minor dialects and languages and ultimately result in the disintegration of a community.”</p>	Paragraph 2, last sentence, amended as follows: “ <i>If the environment is crucial for maintaining traditional skills, knowledge and beliefs, any relocation, detachment or significant change in the environment could trigger the loss of traditional knowledge and culture, beliefs and/or loss of minor dialects and languages.</i> ”
583.	PR8	Health impacts of loss of cultural heritage	<p>Loss of cultural heritage can adversely impact on the following social determinants of health:</p> <ul style="list-style-type: none"> <li>- Community cohesion</li> <li>- Individual, household or community stress, particularly if people have different perceptions about the fairness of the process.</li> </ul>	Noted, thank you.
584.	PR8	Para 17	<p>The first sentence in paragraph 17 of Performance Requirement 8 reads as follows: “Where the project may significantly impact cultural heritage, and the impact, damage or loss may endanger the cultural or economic survival of communities within the country of operation, who use the cultural heritage for long-standing cultural purposes, the client will ...”.</p> <p>The extreme, alarmist and inappropriate statements appearing in these two paragraphs (i.e., “ultimately result in the disintegration of a community” and “endanger the cultural or economic survival of communities”) need to be deleted.</p>	We agree that the language should not speculate on potential outcomes. Paragraph 16 addresses the same information in greater detail, thus paragraph 17 has been deleted.
	<b>PR9</b>			
585.	PR9	Introduction	I know many funds are channelled to micro and SME sector but EBRD also finances indirectly larger corporate loans and other activities, especially where it has equity investment in FIs. I think it would be better to highlight the full range of EBRD's activities first and then	Noted.

	Ref.	Issue	Comment	Management Response
			highlight SME.	
586.	PR9	Project Identification	Page 77 – How will EBRD be selecting FIs? The selection criteria should be included and disclosed.	FIs who wish to work with the Bank are selected by the Banking Department on the basis of past and current financial performance, the financial sustainability of their operations, and their ability to reach out into more distant regions of the relevant country. Consideration of environmental and social issues is then considered once a FI has been proposed by the Banking team and focuses on such issues as the nature of the current and future client portfolio, size of typical loans, type of products offered and current systems and capacity in place for managing environmental and social issues.
587.	PR9	Category A	In the definition of when something is a category A for financial intermediaries—will this also only be looking at future impacts?	The definition of Category A projects is done according to the indicative list of Category A projects included as Appendix 1 of the Environmental and Social Policy. This does include consideration of future environmental and social impacts.
588.	PR9	Para 11	Should this be a Board member where EBRD has equity investment and for credit lines, etc a senior management representative. In my own view there should always be someone at Board level who has ultimate responsibility for E&S matters.	FIs working with EBRD are required to appoint a member of management to have overall responsibility for environmental and social issues. In addition, and depending on the size of the FI, they are also required to appoint one or more staff members to have day-to-day responsibility for implementation of the Bank's environmental and social requirements.
589.	PR9	Para 14 Bullet Point List	Should employment law, equality and diversity be included here as well?. This seems a gap.	Given the delegated nature of the environmental and social procedures FI sub-projects are required to comply with national law on relevant environmental and social issues including as relevant employment, equality and diversity. The FIs themselves are also subject to the requirements of PR2 which includes consideration of these issues.
590.	PR9	Exclusion List	How do you invest in financial intermediaries that have activities that EBRD does not allow, like defence, tobacco?	EBRD will review the portfolio of the prospective FI to understand whether or not the Bank is involved in the financing of any excluded activities. Consideration is made of what proportion of the portfolio is comprised of excluded activities. A decision will then be made as to whether to proceed with that FI, and if yes, what conditions will be placed upon the FI in terms of its future involvement in those excluded activities and potential divestments from those excluded sub-projects.
591.	PR9	Due diligence	Information on the Bank's assessment of FIs, their capacity to undertake the FI requirements, and information on their portfolio should all be part of the information disclosed.	EBRD has a standard format for the release of information of FI projects which is part of the Project Summary Document.
592.	PR9	Disclosure of information regarding FI sub-projects	The EBRD presents FIs as a "key instrument for promoting sustainable financial markets and provide a vehicle to channel funding to the micro, small and medium-sized enterprise (SME) sector ( <a href="http://www.ebrd.com/downloads/research/policies/esp-draft.pdf">http://www.ebrd.com/downloads/research/policies/esp-draft.pdf</a> ; p. 62)". To a further extent, the EBRD delegates environmental and social	The Bank recognises that improved disclosure on FI portfolios is a key issue. However, given the number of FIs supported by the Bank, and therefore the number of sub-projects touched by Bank financing, there is a huge challenge in achieving meaningful disclosure of sub-project information across EBRD's FI portfolio. There is also consideration of the commercial confidentiality of FI

	Ref.	Issue	Comment	Management Response
			assessment, risk management and monitoring as well as overall portfolio management to FIs; owing to “the nature of intermediated financing (Ibid; p. 62).” Within this context, <b>the EBRD is requested to improve disclosure of information regarding its FI projects in order to ensure greater accountability and transparency as well as to prove that FI operations are actually used for socially and environmentally sustainable projects that would carry positive benefits to local communities and the environment.</b> In addition, <b>the Bank is invited to include in its new ESP a clear commitment over routinely disclosing information on the average loan size, the disbursed proportion of intermediated loans, and most importantly the sectors that such loans are supposed to be backing.</b>	portfolios which the EBRD is duty-bound to respect. The focus of attention has therefore been to improve disclosure of information by the FIs themselves. PR9 requires FIs to put in place a system for dealing with external communication on environmental and social matters, e.g. a point of contact for dealing with public enquiries and concerns related to environmental and social matters. The FI should respond to such enquiries and concerns in a timely manner. The FIs are also encouraged to publish their corporate environmental and social policy or a summary of their ESMS on their website, if available. Where possible, FIs will list on their website the link to any Environmental Impact Assessment (“EIA”) reports for Category A sub-projects which they finance.
593.	PR9	Disclosure of Information	In its PR9 on financial intermediaries (FIs), the EBRD presents FIs as a “key instrument for promoting sustainable financial markets and provide a vehicle to channel funding to the micro, small and medium-sized enterprise (SME) sector”. To a further extent, the EBRD delegates environmental and social assessment, risk management and monitoring as well as overall portfolio management to FIs; owing to “the nature of intermediated financing.” Within this context, <b>the EBRD is requested to improve disclosure of information regarding its FI projects in order to ensure greater accountability and transparency as well as to prove that FI operations are actually used for socially and environmentally sustainable projects that would carry positive benefits to local communities and the environment.</b> In addition, <b>the Bank is invited to include in its new ESP a clear commitment over routinely disclosing information on the average loan size, the disbursed proportion of intermediated loans, and most importantly the sectors that such loans are supposed to be backing</b>	The Bank recognises that improved disclosure on FI portfolios is a key issue. However, given the number of FIs supported by the Bank, and therefore the number of sub-projects touched by Bank financing, there is a huge challenge in achieving meaningful disclosure of sub-project information on FI portfolios. There is also consideration of the commercial confidentiality of FI portfolios which the EBRD is duty-bound to respect. The focus of attention has therefore been to improve disclosure of information by the FIs themselves. PR9 requires FIs to put in place a system for dealing with external communication on environmental and social matters, e.g. a point of contact for dealing with public enquiries and concerns related to environmental and social matters. The FI should respond to such enquiries and concerns in a timely manner. The FIs are also encouraged to publish their corporate environmental and social policy or a summary of their ESMS on their website, if available. Where possible, FIs will list on their website the link to any Environmental Impact Assessment (“EIA”) reports for Category A sub-projects which they finance.
594.	PR9	Private Equity Funds	The Bank supports a variety of financial service providers including among others, private equity funds. Whereas channelling development funds through private equity does not guarantee the nature of the end beneficiaries and allows for monitoring and evaluation of development outcomes, the lack of effective monitoring mechanisms of development, environmental, and social outcomes of the projects on financial intermediaries is equally problematic.	Private equity funds are required to provide the EBRD with Annual Environmental and Social Reports on implementation of environmental and social requirements and on the environmental and social performance of the investment portfolio. EBRD’s Environmental and Sustainability Department conducts monitoring missions on an occasional basis to evaluate the extent to which its partner FIs are complying with its the environmental and social requirements. Such monitoring involves a review of environmental and social documentation relating to investments, discussions with Investment officers and visits to selected clients.
595.	PR9	Misc edits	Given its importance in sector development, we suggest the following edits to paragraph 18, second bullet point, regarding animal welfare: <input type="checkbox"/> Identify, where appropriate, opportunities for developing financial	Noted and included.

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			<p>products with high environmental and/or social benefits (for example, finance for investments in energy efficiency, renewables, or pro-biodiversity <b>or pro-animal welfare</b> business, products targeting women entrepreneurs, access to credit for micro-entrepreneurs).</p> <p>We suggest the following change for clarity: The nature of intermediated financing means that the FIs will assume delegated responsibility for environmental and social assessment, risk management and monitoring as well as overall portfolio management. The effectiveness of the FIs environmental and social risk management will be evaluated and monitored <b>by EBRD</b> on a continuous basis throughout the project life-cycle. The nature of delegation may take various forms depending on a number of factors, such as the type of finance provided.</p> <p><b>Reporting</b> While it is of the utmost importance that the FI provide at least an Annual Environment and Social Report, the EBRD role in review, reporting, and possible remedial action is not clear. Therefore, we suggest this additional paragraph to be placed after paragraph 17: <b>EBRD will review each FI's Annual Environment and Social Report, including whether a FI fails in this obligation. The EBRD will compile an annual report on its review to be released in the first quarter of each year on the EBRD website. This EBRD report will include, at a minimum, a list of all FI Annual Environment and Social Reports, as well as a summary of any significant shortcomings and EBRD remedial actions.</b></p>	<p>Noted and included.</p> <p>The EBRD has a standard process for the monitoring of FI projects which comprises the submission of standard format Annual Environmental and Social Reports by the FI, and the review and approval of those by staff of the Environment and Sustainability Department. If any deficiencies in reporting are noted by ESD staff these are brought to the attention of the FIs and additional information or corrections will be requested.</p>
596.	PR9	Monitoring	<p>FI financing – does EBRD track FI funding all the way to FI clients/sub-projects – are there specific requirements for sub-projects that the Bank is enforcing and how this is done in practice?</p>	<p>The EBRD regularly monitors the performance of FIs and how they assess and manages E&amp;S risk across their entire portfolio and monitoring of sub-projects. All sub-projects are required to meet applicable national EHS regulations and standards. EBRD ES risk management and monitoring procedures are designed to assist the FI and which are covenanted in the Legal Agreements between FIs and EBRD. FIs provide the EBRD with Annual Environmental and Social Reports on implementation of ES requirements and on the E&amp;S performance of its portfolio. EBRD's Environmental and Sustainability Department is required to conduct monitoring missions on an occasional basis to evaluate the extent to which its partner FIs are complying with the environmental and social requirements. Such monitoring involves a review of environmental and social documentation relating to loans and investments, discussions with credit</p>

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				officers and senior bank staff, and visits to selected clients.
597.	PR9	Implementation of FI commitments	[T]he Bank supports a variety of financial service providers including among others, private equity funds. Whereas channelling development funds through private equity does not guarantee the nature of the end beneficiaries and allows for monitoring and evaluation of development outcomes, the lack of effective monitoring mechanisms of development, environmental, and social outcomes of the projects on financial intermediaries is equally problematic.	All Private Equity (PEs) Funds must comply with EBRD E&S Risk management and monitoring procedures for Active Equity lending and adhere to the Bank's E&S Exclusion List. All investee companies are required to meet at a minimum applicable national EHS regulations and standards. EBRD ES risk management including monitoring procedures are designed to assist the Funds and these are covenanted in the Legal Agreements between the Funds and EBRD. PEs are required to provide the EBRD with Annual Environmental and Social Reports on implementation of ES requirements and on the E&S performance of the investment portfolio. EBRD's Environmental and Sustainability Department is required to conduct monitoring missions on an occasional basis to evaluate the extent to which its partner FIs are complying with its the environmental and social requirements. Such monitoring involves a review of environmental and social documentation relating to investments, discussions with Investment officers and visits to selected clients.
598.	PR9	Stakeholder engagement	<p>Paragraph 16. ....The FIs are also encouraged to publish their corporate environmental and social policy or a summary of their ESMS on their website if available. Where possible, FIs will list on their website the link to any Environmental Impact Assessment (EIA) reports for Category A sub-projects which they finance.</p> <p><b>This raises several questions:</b>  <b>- If the FIs don't have their own environmental and social policy and don't have their own ESMS, or do not meet the requirements of the policy and the system, how will the EBRD act with regard to the selection and work of the FIs?</b>  <b>- Why does this paragraph not include Category B projects?</b></p>	<p>The EBRD will work closely with the FIs to develop/improve new/existing ES Policy and ESMS to satisfy EBRD requirements. EBRD provides Technical Assistance assist FIs in this task as well as providing capacity building/training to relevant FI staff.</p> <p>FIs are only required to screen risk of their clients' business activities as Low/Medium/High/Category A under this Policy.</p>
	<b>PR10</b>			
599.	PR10	General	PR10 clearly reflects good practice and is an important standard for the Bank.	Noted.
600.	PR10	Definitions	PR 10 – define “adequate/appropriate” information to be disclosed.	The adequacy of information varies in accordance with project characteristics and the needs of stakeholders. It is therefore kept as a flexible term that should be defined for each relevant project.
601.	PR10	Definitions	<ul style="list-style-type: none"> <li>- The term of “appropriate information”- has to be clearly defined;</li> <li>- Engagement of all interested parties, including NGOs should be ensured</li> </ul>	Noted.



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602.	PR10	Terminology	Para. 1: Please amend “open and transparent engagement” to “open and transparent consultation” or “open and transparent public participation procedure”.	The term “engagement” is used, as it covers notification, information disclosure, consultation, reporting, managing of grievances, and all means of communication with affected or interested parties. Workers are also stakeholders, even if they are not considered public, and they should have information, consultation, and the ability to raise grievances. We therefore chose the more comprehensive term. We do not use the term “public participation” as this implies that part of the decision-making is delegated to, or shared with the public, and EBRD is not in a position to ensure this. For some projects, where there are no significant impacts and no changes are proposed, the public may only be informed, not consulted. We needed a term that can be interpreted depending on the characteristics of the project, impacts, affected and interested parties.
603.	PR10	Para 1	Consider more affirmative language “Stakeholder engagement <i>is often most effective</i> when initiated at an early stage of the project cycle” to “ <i>To be effective</i> , stakeholder consultations <i>must be</i> initiated at an early stage of the project cycle.” Public participation procedures cannot be effective when project features, including for example the location, have already been determined.	In principle, we agree; however, clients come for financing at all stages of project planning and implementation, and therefore we are not always involved at the early stages. This kind of language would need to be in guidance information. The PR needs to be applicable to projects at all stages of development that are under consideration.
604.	PR10	Para 2	Regarding “(i) ... <i>appropriate</i> information”, we are concerned on how the information to be disclosed will be assessed as “appropriate” or “not appropriate”. According to international best practice <i>all</i> project-related information should be disclosed. In particular with regard to the EIA documentation, the Implementation Committee has stated that “[...] That was in addition to their responsibility to provide the possibility of access to the full and final environmental impact assessment documentation in the original language or languages, until the procedure ended and no earlier than when the final decision had been provided to the public in the affected Party. Further, copyright protection should not be considered as allowing for the prevention of the public availability of the full environmental impact assessment documentation” (ECE/MP.EIA/IC/2010/4, para. 20).	An EIA/ESIA is one document, normally subject to public review; however, there are often many other studies and information that are taken into account in project preparation. The client is responsible for clarifying what they intend to disclose and demonstrating why it is appropriate, given the project characteristics, local conditions, interest of stakeholders, etc.
605.	PR10	Grievance mechanisms	Grievance mechanisms are useful but are often not used well or understood by the communities. Additional guidance is required for communities to better understand how to use this mechanism.	We note this request and will be updating a guidance note on grievance mechanisms.
606.	PR10	Miscellaneous	<ul style="list-style-type: none"> <li>Para 4: For clarity, it is good to specify that the PR applies to both category A and B projects.</li> <li>Para 6: there is no clarity with regard to “in varying degrees”. We suggest that “in varying degrees” deleted and after the end of the sentence to define it as follows: “Each of these elements should be</li> </ul>	<p>Good suggestion – we will revisit references to category A &amp; B projects</p> <p>We have reviewed the use of qualifiers.</p> <p>Noted – we will revisit explicit reference to and better alignment with Espoo in the final revision</p>

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			<p>tailored to the specificities of the project, with the overriding objective of ensuring effective stakeholder consultations”.</p> <ul style="list-style-type: none"> <li>• Para 7: Footnote 3 and the reference to international law should remain (see general comment [on Espoo/Aarhus]).</li> <li>• Para 15: The current proposal lowers the minimum international standards that relevant project environmental information is available upon request to any member of the public without having to state an interest (art. 4 and 6, para. 6, of the Aarhus Convention). Subject to information excepted from disclosure under the Public Information Policy, all information relevant to the decision-making should be disclosed to the public, and the information listed in the bullets in proposed para. 15 should be considered as a minimum list.</li> <li>• Paras 17-18: Consider the express inclusion for the requirement for the client that in the final decision due account is taken of the outcomes of the public participation procedures (see art. 5, para. 1, in conjunction with art.3, para. 8, and art. 4, para. 2, of the Espoo Convention – see also art. 6, para. 8, of the Aarhus Convention).</li> <li>• Para 27: in that respect, consider including an obligations for the Client to make the contact details of the relevant personnel readily available on its website.</li> </ul>	<p>Website disclosure of appropriate information is considered best practice; however, not all of EBRD’s clients have websites so we cannot make this a firm requirement.</p>
607.	PR10	Stakeholder Engagement Page 65-67	Trade Unions, or Workers’ Organisations, should be included as stakeholders. Anything that may have an impact on assessment, implementation and monitoring of matters included in PR2, and any other matters pertaining to employment policies, labour standards and practices, occupational health and safety, workers’ rights, workers’ welfare and workers’ accommodation needs the inputs and voice of labour representatives.	A section on Worker Communication was included as Para 7 in PR2
608.	PR10	CSO engagement	At the project level, more efficiency with respect to public consultation is needed (e.g. better scheduling to include CSOs to allow sufficient time to review information and to participate, and comments should be fully considered.). On the field, and regardless of the category of the project, it appears that there is no real consultation process.	We are identifying further guidance and tools necessary to improve implementation of the requirements in PR10.
609.	PR10	Corporate SEP	<b>Corporate Stakeholder Engagement Plan (SEP)</b> In paragraph 14 of Performance Requirement 10, the EBRD is overstepping its bounds by demanding that clients with “multi-site operations” put in-place a corporate Stakeholder Engagement Plan. Recognizing that it is likely that not all of a client’s “multi-site operations” would be associated with EBRD financing, the EBRD can only require a Stakeholder Engagement Plan for those projects/ operations of a client that are	This reference to a corporate SEP is primarily for when we finance corporate loans, or take an equity stake in a company. It would not be possible to apply the requirements across all operations, so due diligence focuses on the corporate approach and capacity to undertake EBRD requirements.

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			financed by the EBRD.	
610.	PR10	Language	<p><b>Realities of Working in Multi-Lingual Project Settings</b></p> <p>Paragraph 16 of Performance Requirement 10 states the following: “The Information will be disclosed in the local language(s), as identified in the SEP, and in a manner that is accessible and culturally appropriate, ... “.</p> <p>In project locations where more than two languages and/or dialects are prevalent, it is unreasonable for the EBRD to demand that all of a project’s “information” be provided in all of these languages/dialects. Therefore, it is recommended that the EBRD require its clients to make available in the public domain a project’s “information” in English and the host-country’s predominant <u>official</u> language, with a short non-technical summary being made available in the country’s other official language(s) and/or dialects. This same comment applies to the second bullet of paragraph 18 in Performance Requirement 10.</p>	The requirements in PR10 are that the public information and consultation be meaningful. If a group of people are affected, but speak a different language than the official one, this means they may not get the information needed in order to understand the impacts and make meaningful comments. The same would be true for workers who speak another language—the result is what is needed—that people are informed, and can communicate their concerns. If information is not in the language of a significant group that speaks a different language, there may be safety implications, delays in the project, unrest in the community, etc. The client’s Stakeholder Engagement plan should identify stakeholders and clarify what languages are appropriate for the particular groups. In some cases, only partial information is translated, but this depends on how the people are affected and their needs.
611.	PR10	Para 19	<p>[Add highlight at end] Informed participation involves organised and iterative consultation, leading to the client’s incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of benefits and opportunities, and implementation issues, <b><u>including any impacts arising from the design and implementation of offsets developed to compensate for residual impacts.</u></b></p> <p>The impacts from compensation may not necessarily be considered when reading this and probably best to be explicit that there could be affected communities wrt to the compensation or offset and that those impacts need to be considered a part of the package. This could be included here or even have its own paragraph</p>	Noted – stakeholder engagement with affected communities is a key requirement for the planning and implementation of any offset strategy
612.	PR10	Aarhus Convention	Explicit reference to the Aarhus Convention should be made in this chapter.	The Aarhus Convention is now referenced in the Policy.
613.	PR10	Aarhus Convention	How do we know that public consultations are carried out in Turkmenistan in accordance with the Aarhus convention? What do you do if not?	The Bank reviews stakeholder identification, disclosure of information and consultation for each project. If the local requirements are not meeting the Bank’s requirements, additional measures are agreed with a client and monitored by the Bank.
614.	PR10	Category B Disclosure	We would like to see more disclosure/access to information in local languages on PPP projects.	We understand the concerns on the amount of information available on Category B projects. We are planning to disclose Non-Technical Summaries

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615.	PR10		Limited information disclosed, although projects may have significant impacts.	for Category B projects.
616.	PR10		<b>ESAPs of all projects</b> should be public documents and <b>disclosed</b> . Why is it difficult for the Bank to disclose ESAPs?	
617.	PR10		We would like to see more disclosed by the client (and EBRD) for category B projects, in the same detail as category A projects.	
618.	PR10	Public Consultation	Public consultations are not organised on all projects that have adverse impacts in Ukraine. Lack of information on projects, impacts and public meetings disclosed by clients in general. There is an opportunity for the Bank to gain positive publicity if it clearly required adequate disclosure and consultations.	Public information should be provided for Category B projects where there may be adverse impacts. If decisions are being made that affect stakeholders, then consultation is likely to also be included. Clients are required to have a stakeholder engagement plan (or equivalent) if there are adverse impacts for people to be aware of how information can be obtained, and to describe the grievance process.
619.	PR10	Public Consultation	Does the policy provide for public consultations on a project by project basis?	The requirements are designed to meet the needs of the clients and the stakeholders. The level of detail in the requirements depends on the decisions being made and the people affected or interested.
620.	PR10	ESIA Disclosure	How do you promote access to ESIA for CSOs?	Each client develops a stakeholder engagement plan during scoping of an ESIA—this should identify particularly affected or interested groups, like CSOs. If you comment on the SEP, ask to be included in the stakeholder list, etc., comment on media used for notification, the locations of documents for public review, languages, etc., then these comments should be taken into account. CSOs often fail to comment on how the process is designed, which is the opportunity to ensure that the process is designed to meet stakeholder needs.
621.	PR10	CSOs	NGOs should always be included in the stakeholder engagement process.	Each client develops a stakeholder engagement plan or equivalent which should identify stakeholders. It is important for CSOs to make clients aware that they are interested in a particular project.
622.	PR10	Ecosystem Services	Because key ecosystem services the project impacts cannot be properly identified, assessed, or mitigated without input from the people who depend on them, the last sentence of paragraph 2 should read “In the case of projects involving involuntary resettlement and/ or economic displacement, <u>having an adverse impact on key ecosystem services</u> , affecting indigenous peoples or having an adverse impact on cultural services, PR 10 requires clients to “also apply the special disclosure and consultation requirements of PR 5, <b>PR 6</b> , PR 7 and PR 8”.	Commitments related the use of, and dependence on, ecosystems by potentially affected communities (and indigenous peoples) and the project have been strengthened in the PRs 4, 5, 6, 7.
623.	PR10	National requirements	Disclosure of project related information is fragmented and there is a difference between local and EBRD disclosure requirements – information disclosed in OVOS more limited than EBRD requires, there should be harmonisation of requirements.	We recognise that some national requirements are not robust in requirements for disclosure of information and consultation. National requirements have to be met and EBRD does a gap analysis to see if any additional measures are necessary to meet EBRD requirements.

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624.	PR10	Level of detail	P.85 – explain how public consultation/stakeholder engagement is organised – procedures and timelines.	Normally this level of detail is reserved for guidance notes and not at the policy level.
625.	PR10	On-going Consultation	Transparency – EBRD should ensure consultation with CSOs and participation of public organisations throughout the project cycle. Is there a section in the policy about that? What are the activities and practices?	See sections 17-18; 24-25 of PR10 on information and consultation during project implementation. There should also be a grievance mechanism in place to handle concerns.
626.	PR10	On-going consultation	There is no state[ment] within this PR that will oblige the project developer to continuously communicate with the affected local communities in sense of maintaining the locations with disclosed project information.	See sections 17-18; 24-25 of PR10 on information and consultation during project implementation. There should also be a grievance mechanism in place to handle concerns.
627.	PR10	On-going consultation/ reporting	<b>Duration of Environmental and Social Performance Monitoring Reporting</b> Paragraph 23 of Performance Requirement 10 deals with environmental and social performance monitoring reporting by a client. The EBRD can only require a client to publish environmental and social performance monitoring reports for the duration of the loan period – after a loan has been repaid, a client can choose to stop publishing such reports.	We would hope that clients are transparent and communicative with stakeholders long after EBRD is no longer involved with the project. Part of capacity building in transition countries is to let people understand that they have a right to certain kinds of information. While EBRD’s leverage to require reporting may be ended, it is hoped that over the course of a project, that a client will understand that clear and accurate information routinely provided to the community is far better than them relying on informal gossip that may be inaccurate.
628.	PR10	Project implementation	Paragraph 24. Engagement during project implementation and external reporting. This paragraph should specify in what way the comments and wishes of the stakeholders, including the community, relating to ESMP and ESMS, will be taken into account, and if they are not taken into account, by when they will be able to get responses to their comments and wishes.	We do not wish to be too prescriptive. Each client is different and structures of finance differ, as well as options and opportunities, and there is not always consensus in a community about what should be done. EBRD notes that it must pay close attention to these commitments during implementation to ensure they are monitored.
629.	PR10	Disclosure and Consultation	At the project level – need more efficiency with respect to public consultation (e.g. better scheduling to include CSOs to allow sufficient time to review information and to participate).	We note the concern about timing of information disclosure. It is critical that CSOs comment on stakeholder engagement plans—as this will ensure that notification of consultation opportunities is reaching specific stakeholders promptly. Often clients do not get feedback on SEPs, and then CSOs complain later about the methods of consultation. The SEP is the best opportunity to influence the consultation process.
630.	PR10	Disclosure of Information	Projects in the mining sector are associated with large-scale adverse impacts and have cumulative effects. They are Category A and B projects requiring comprehensive assessment and the participation of the general public and independent experts. To achieve this, they need information on environmental impacts at all stages of their implementation: the submission of the EIA by project design organisations, the assessments and views generated by the expert review process, the environmental impact statement, project implementation, company reports on their environmental protection	See Public Information Policy.

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			<p>and social measures, the Bank’s monitoring results, the results of social monitoring, if undertaken and submitted to stakeholders. A requirement of this kind, if put forward by the EBRD, would allow conflicts between business entities and the community and with the local population to be avoided, because if it is made mandatory it will allow the project’s PR to be separated from an objective view of the project. The point is that the more requirements the Bank puts forward the greater the extent to which the interests of the various parties are taken into account at the various project stages, and consequently do not develop into determined opposition.</p> <p>At the same time, the Bank will receive feedback enabling it to make prompt decisions at early stages of emergence of any problems, thus avoiding unnecessary expenditure and aggravation of the conflicts.</p>	
631.	PR10	Managing expectations	<p>Para 1: Stakeholder Engagement is often most effective when initiated early in the project cycle. This is true, however we find that initiating consultations and engagement too early, without having concrete information to provide to people can be counter-productive. So, early engagement is preferred, however only if sufficient information which is of importance to stakeholders is available, such as a description of the proposed project, expected impacts on stakeholders and clear timelines.</p>	Agreed—good comments.
632.	PR10	Miscellaneous edits	<p><b>PR10, proposed para. 1, last sentence:</b> The current wording is very passive and a clearer obligation should be placed on clients. Please amend the words: “Stakeholder engagement is often most effective when initiated at an early stage of the project cycle” to read: “To be effective, stakeholder engagement must be initiated at an early stage of the project cycle.” It is not merely that stakeholder engagement is “often” more effective if initiated early. Rather, it is self-evident that effective public consultation cannot take place when most aspects of the project have already been decided. Moreover, not to do so would be inconsistent with article 6(4) of the Aarhus Convention, which requires early and effective public participation when all options are open.</p> <p><b>PR10, deleted para. 2:</b> While we understand that the PRs are being revised to focus on Clients’ responsibilities, we are very concerned at the complete deletion of the Aarhus Convention from this paragraph. Instead, we think it would have been entirely appropriate for PR10 to require clients to meet the requirements of the Aarhus Convention in their activities and we recommend that a new provision with wording to this effect be inserted.</p> <p><b>PR10, proposed para 2:</b> With respect to the phrase“(i) ...disclosure of appropriate information”, we are concerned that this falls below</p>	Noted – we will review these points in detail. We have now reinserted explicit references to Aarhus and Espoo in the ESP.

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			<p>international good practice of article 6(6) of the Aarhus Convention which requires “all information relevant to the decision-making to be disclosed”. “All information relevant to the decision-making” is clearer much broader than “appropriate information”. Moreover, PR10 is completely silent as to what should be considered as “appropriate” or “inappropriate” information, leaving this in the hands of the Client to decide. To protect the Bank from future controversy caused by angry members of the public challenging non-disclosure of documents they think “appropriate” to disclose we consider that it would be important for PR10 to set a clear standard consistent with international good practice, ie “all information relevant to the decision-making”.</p> <p><b>PR10, proposed para 4:</b> To avoid confusion among clients and stakeholders, please clarify (perhaps in a footnote) that PR10 applies to both category A and B projects.</p> <p><b>PR10, proposed para 6:</b> While we understand the intention behind the words, for clarity, we suggest to delete “in varying degrees”, as it will create confusion for clients and stakeholders alike. After the sentence, we suggest to instead add a second sentence “Each of these elements should be tailored to the specificities of the project, with the overriding objective of ensuring effective stakeholder engagement”.</p> <p><b>PR10, proposed para 7, deleted footnote 3:</b> We are very concerned at the deletion of footnote 3 from the 2008 policy which cited the Aarhus and Espoo Conventions. The Aarhus and Espoo Conventions remain the only legally binding international treaties addressing information disclosure and stakeholder engagement on projects, thus it would be a major omission not to specify them here. Their deletion leaves the Bank open to criticism that its review policy aims to “water down” PR10, which we are sure is not the impression the Bank would be wishing to give.</p> <p><b>PR10, proposed para 15, second sentence:</b> The current proposal falls below international good practice in two respects. First, relevant project information should be available upon request to any member of the public without having to state an interest, not just affected communities (article 4(4) of the Aarhus Convention. Second, subject to information excepted from disclosure under the Public Information Policy, all information relevant to the decision-making should be disclosed to the public, and the information listed in the bullets in proposed para. 15 should be considered as a minimum list (article 6(6) of the Aarhus Convention). We recommend that proposed para. 15 be revised in order to meet international good practice in these respects.</p> <p><b>PR10, proposed paras 17-18:</b> Whilst there are many excellent</p>	

	Ref.	Issue	Comment	Management Response
			<p>elements in these paragraphs, at the moment there is currently no express requirement for the Client to take due account in its decision-making of the outcomes of the consultation. In order to ensure that consultation is genuinely meaningful, and in accordance with international good practice of article 6(8) of the Aarhus Convention, we recommend that a clear requirement for the Client to take due account of the outcomes of the consultation be added (perhaps to the list of bullet points in para. 18).</p> <p><b>PR10, proposed para 27:</b> As an additional point, we suggest the following be added “The Client will make the contact details of the relevant personnel responsible for the various stakeholder engagement activities readily available on its website.”</p>	
633.	PR10	Category B Disclosure	<p>For category B projects, EIA reports prepared according to national requirements should be made available on projects’ webpages on the official EBRD websites. Relevant proofs of client’s compliance with the requirements on public participation during the process of EIA should be also made available on projects’ webpages on the official EBRD website (for example, the list of links to the Statements of Intent and EIA reports on client’s webpage). This should be available for the review before final decision on project. For the projects within direct lending facilities such information should be made available on facility’s webpage. There also should be information about the timing of the decision to be made;</p> <p>Environmental and Social Action Plans (ESAP) for the category B projects should be made available to public upon request.</p>	We understand the concerns on the amount of information available on Category B projects. We are planning to disclose Non-Technical Summaries for Category B projects.
634.	PR10	Meaningful consultation	Publishing advertisement in local newspaper once doesn't mean that communication is realized and all of the objectives are met.	EBRD agrees with this concern—this is why the words “meaningful consultation” are used repeatedly in PR10. The Client should demonstrate that their plan of communication is reasonable and appropriate for their particular stakeholders.
635.	PR10	CSOs	The Bank has mechanisms for public consultation – can the Bank force companies to involve CSOs in project preparation and monitoring?	The Bank can discuss third party monitoring with clients on a specific needs basis, where appropriate. It is normally the case, however, that it is not just a general CSO that can participate, but a specific expertise in a particular area, such as a bird specialist, etc.
636.	PR10	Stakeholder Identification	There are a lot of complaints from stakeholders on particular projects. There should be more specific guidance on stakeholder identification in PR10; as well as a clear definition of what “public interest” means [paragraph 7] and how this is measured by EBRD.	The words “public interest” are used to clarify that there may be projects where few adverse impacts or affected people are identified, but because of the nature of the project, location or sector, people are interested in information on the project, its impacts and mitigation measures—and information needs to be provided to meet this need, as well as when there are adverse impacts.



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637.	PR10	Para 15	What information needs to be disclosed related to associated facilities? Please clarify extent of information that needs to be disclosed related to elements of the Project that will form part of the broad assessment process but not the IMPACT assessment process.	Associated facilities are addressed using a risk based approach. For category A projects, these are often identified in ESIA's. For category B projects, we define information disclosure on a case by case basis
638.	PR10	Applicability	<ul style="list-style-type: none"> <li>Make it more explicit in PR 10 that stakeholder engagement is expected even when an ESIA is not required.</li> <li>Clarify in PR 10 that SEP is required even is an ESIA is not.</li> </ul>	Stakeholder identification, information and a grievance mechanism are required. A client may have information disclosure and grievance processes in place that would not require a separate SEP; however the main requirements are still met.
639.	PR10	Gender	PR10 is the only other Requirement that mentions gender but among other groups generally without addressing women's and men's specific roles and needs. For example, PR10 requires Stakeholder Engagement Plans (SEPs) to document how consultations will be held with different groups in the community and what measures will be implemented to remove obstacles from participation based on gender, age and other differences. The draft ESP must include guidelines on women's participation, requiring that consultations remove implicit participation obstacles such as transportation and gender power roles.	The request for guidance on women's participation will be brought to the attention of the EBRD Gender Group. The ESP and PRs are the main commitments and requirements. Guidance documents are prepared separately and updated from time to time.
640.	PR10	Grievance Mechanisms	Many times a client's grievance mechanism is just not functioning. If you ask for it, they do not have it. There does not seem to be monitoring of these mechanisms by EBRD to reduce the impact of the company on local community and human rights.	Thank you for bringing this to our attention. The implementation of requirements can be challenging and we welcome comments from civil society on where performance can be improved.
641.	PR10	Grievance Mechanisms	Grievance mechanisms are useful but are often not used well or understood by the communities. Additional guidance is required for communities to better understand how to use this mechanism.	We note this point and have heard from clients as well as they would appreciate some guidance on grievance mechanisms.
642.	PR10	Consensus	What is the Bank's policy when consensus on project issues is not reached with civil society?	EBRD does not use the concept of Broad Community Support, so we do not have a requirement for consensus. Clients are expected to identify stakeholders, provide adequate information, consult as appropriate, and provide regular information and opportunities to raise concerns through grievance mechanisms.
643.	PR10	Disclosure of environmental and social information	<p>The new draft of the ESP transfers (or clarifies that) the responsibility for impact assessment, preparation of management plans, public consultations, monitoring and implementation of mitigation measures are predominantly the responsibility of the client. This may appear useful in raising the capacity of clients to deal with risks however, this can only work if there is a clear commitment from the EBRD side to do more than simply "review" the information provided by the client, which is not the case in the current draft. There are a number of recent cases that demonstrate the dangers of this approach [...] in both cases, consultants hired by EBRD worked with information provided by the client and failed to identify the "hidden" problems.</p> <p>In summary, the EBRD puts too much trust in its clients and external consultants and excludes the public from the due diligence process. In</p>	We understand the concerns on the amount of information available on Category B projects. We are planning to disclose Non-Technical Summaries for Category B projects.

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			<p>this regard, we must stress that the high-risk and high-impact projects in the energy and extractives sectors will continue to attract interest from the public and input from stakeholders can improve the quality of due diligence and implementation of mitigation measures. But for this, the public must be given quality information with sufficient notice and the space to participate—the current changes in the policy do not provide for that. Therefore the Bank has to either change the rules on categorisation of projects, or has to improve disclosure and public participation provisions for Category B projects.</p>	