

PUBLIC

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

# **MINING OPERATIONS POLICY**

**REPORT ON THE INVITATION TO THE PUBLIC  
TO COMMENT**

PUBLIC

**ABBREVIATIONS AND ACRONYMS**

ATC	EBRD's assessment of transition challenges
Bank	European Bank for Reconstruction and Development
BAT	Best Available Techniques
CEE	central and eastern Europe
COO	EBRD's Country of Operations
CSO	Civil Society Organisation
DIF/DLF/LEF	Direct Investment Facility / Direct Lending Facility / Local Enterprise Facility
EBRD	European Bank for Reconstruction and Development
EC	European Commission
EHS&S	Environmental, health, safety and social
EIR	Extractive Industries Review of the World Bank
EITI	Extractive Industries Transparency Initiative
ESAC	Environmental and Social Advisory Council
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESP	EBRD's Environmental and Social Policy (2008)
ETC	Early Transition Countries
EU	European Union
EUR, €	Euro
FPIC	Free, Prior and informed consent
FSU	Former Soviet Union
ICMI	International Cyanide Management Institute
ICMM	International Council on Metals and Mining
IFC	International Finance Corporation
IFI	International Financial Institution
ILO	International Labour Organisation
MRAM	Mineral Resources Authority of Mongolia
PIP	EBRD's Public Information Policy (2011)
PLC	Public limited company
PR	Performance Requirement of EBRD's ESP
PWYP	Publish What You Pay coalition
SME	Small and Medium Enterprises
TC	Technical Cooperation
TFP	Trade Facilitation Program
UNDP	United Nations Development Programme
US	United States

## 1. INTRODUCTION

### Mining Operations Policy

In line with EBRD's 2011 Public Information Policy<sup>1</sup> (PIP), the Bank develops strategy and policy documents to guide its investment and other activities in its region of operations. Until the PIP was approved, 'operations policies' provided policy guidance and a set of parameters for banking operations in a number of key sectors. Since November 2011, the Bank has moved from 'operations policies' to 'sector strategies', which strive to offer a more strategic outlook of the relevant sector across EBRD's countries of operations, identifying the major transition challenges and the Bank's priorities in the sector.

The Bank set out to prepare a 'sector strategy' for the mining sector and released a draft for public consultation in April 2012. Various stakeholders have observed that the proposed draft Mining Strategy defined a number of key policy considerations related to the mining sector and the Bank's approach to these issues, rather than offering a strategic outlook of the sector as a whole. The Bank therefore has decided to rename the document the Mining Operations Policy to better reflect its true content and purpose. The Mining Operations Policy outlines the conditions by which EBRD would invest in the sector and its approach to the policy aspects relevant to the Bank's mining operations, including the environmental, health, safety and social (EHS&S) performance and transparency. It consolidates EBRD's current approaches for controlling impacts and engaging stakeholders using best practices. The Mining Operations Policy has equal status as a document guiding the Bank's operations to a 'sector strategy'.

### Public Consultation

The consultation for EBRD's Mining Operations Policy (the "Policy", known previously as the Mining Strategy) started on 25 April 2009 when the components of a future Policy were first discussed with civil society organisations. Consultations with EBRD's stakeholders were then developed at EBRD's annual meetings and in a number of individual meetings throughout 2009, 2010 and 2011 before the draft Policy was written and issued for comment.

In accordance with EBRD's PIP, the Bank launched the public consultation to allow stakeholders, including those with a particular expertise and interest in mining, to comment on the draft Policy. On 25 April 2012 the draft Policy was posted on EBRD's website in English and Russian. The public was invited to contribute comments on the draft Policy for 60 days, concluding on 24 June 2012. Following requests from civil society organisations (CSO), the Bank agreed to extend the deadline for receiving comments to 16 July 2012.

Over the course of the public consultation the Bank invited more than 1,500 organisations to comment on the Policy from a wide range of stakeholders, including mining companies, CSOs, governments and academia and put an active effort into reaching grass-roots organisations. The Bank's independent Environmental and Social

<sup>1</sup> Available at: [www.ebrd.com/downloads/policies/pip/pipe.pdf](http://www.ebrd.com/downloads/policies/pip/pipe.pdf).

Advisory Council (ESAC) discussed the objectives of the proposed Mining Operations Policy on 14 April 2011 and received an update on the draft Policy on 9 February 2012 in London; written comments from ESAC were requested during the public comment period. The Bank organised 8 public meetings and workshops in London, Sofia, Ulaanbaatar, Moscow and Toronto. The Policy was also discussed with CSOs at the Bank's annual meeting on 18 and 19 May 2012 in London. Additional comments were provided through 25 individual meetings and 21 sets of written comments were received. Overall, 118 contributions of comments on the draft Policy were registered.

Contributions were received from international CSOs and leading mining companies as well as from local organisations, regulators, industry associations, cement producers (with regard to quarrying) and consultants. A comprehensive list of stakeholders which provided comments is presented in the Annex.

## 2. PUBLIC COMMENTS AND STAFF RESPONSES

Ref.	Issue	Comment	Response
	Consultation and approval process	The final revised Strategy should be made available to the public with a summary of comments received and staff responses before the final Strategy is considered for final Board approval.	Stakeholder engagement and information disclosure activities on the Mining Operations Policy (the Policy) were carried out in accordance with the Section 2.2 of the Bank's PIP of 2011. Comments on the timing of disclosure of draft documents should be made in 2013 when the PIP is being reviewed.
	Consultation and approval process	It is not clear what the Bank's plan is in informing on the Strategy and related information.	Upon the approval of the Policy by the EBRD Board of Directors, the final Policy and Report on the Invitation to Comment will be publicly released and posted on the EBRD web-site in English and Russian languages. At the time of the Policy posting, EBRD will alert CSOs which took part in the public consultation process, as well as all other CSOs in the Bank's database.
	Executive Summary	The Strategy should include an Executive Summary; it is suggested to number the paragraphs.	Noted. An executive summary will be included in the final Policy released on EBRD web-site (replacing the President's Recommendation which appeared in the draft Policy). Each section and sub-section is numbered. The revised Policy will follow EBRD's usual format for strategies, which does not include numbering paragraphs within the sub-sections.
	Executive Summary	The Strategy states a project with known issues in the Kyrgyz Republic serves the interests of the country – but this is not the case and the conflict of interest between government compliance and revenue is stark.	The wording in the revised Policy has been amended in response to the comment. Comment noted.
1	General	The Bank should prioritize its actions in the Strategy to have a more effective impact.	It is intended that the operational priorities outlined in the Policy must all be implemented by the Bank. The Bank does not intend to prioritise environment over health and safety or corporate governance. However each individual project will only be relevant to some of the priorities.
1	General	The Strategy is more about the risks associated with the mining not the benefits.	The wording in the revised Policy has been amended in response to the comment.

1.1	General	The Strategy is quite dense and heavy and some key commitments get a little lost in descriptive text. The Strategy could possibly	Comment noted.
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Ref.	Issue	Comment	Response
		benefit from moving some parts into footnotes or annexes.	
1.1	General	The Strategy appears to lack a vision and strategic approach for long-term sustainability as well as does not provide concrete examples of the expected results from the Bank's intervention, e.g how the Bank intends to improve competition conditions and add value to diversification of economy. The key role of EBRD should be to help to bring mining projects to high levels of environmental and social standards and promote transparency of the sector.	The purpose of the Policy is not to be too descriptive with examples of EBRD projects, but rather looking forward to define what priorities EBRD will have in its investments. These include, as suggested, to meet the highest levels of environmental and social standards in line with the Environmental and Social Policy (ESP) <sup>2</sup> and promote transparency of the sector as outlined in section 3.3.
1.1	Sustainable development	It is being challenged that the Bank is working on sustainability of the mining sector, as opposed to sustainability within the mining sector.	The wording in the revised Policy has been amended in response to the comment.
1.1	Sustainable development	The Strategy needs to set a clear vision for sustainable development.	The Bank's commitment to sustainability is in the ESP for environmental and social issues; the economic part of sustainability is in the Bank's other documents (e.g., EBRD's 2011 Financial Report) <sup>3</sup> .
1.1	Sustainable community investment	The Strategy should specify what 'sustainable community investment' is.	This comment would be more appropriately submitted for consideration in the ESP review in 2013.
1.1	Objectives	- The objectives of the Strategy are not fully clear, with nothing laid out as a vision – it would be useful to have a clearer sight as to what the Strategy is trying to achieve. - It is deemed that the Strategy does not look like a strategy but an analytical document with few strategic ideas.	The Policy is not intended to present the Bank's own vision for the sector, but rather to outline the Bank's approach in investing in the sector and how the Bank will invest in mining as well as address the remaining transition challenges.
1.1	Objectives	There is no mention of what is the measure of success in the Strategy.	Comment noted. As the Bank continues to invest in the mining sector, it will continue to evaluate on a project-by-project basis how well the investments meet the Bank's mandate and are consistent with its policies and strategies.
1.1	Measuring Sustainable development	It is not clear what indicators will be used for measuring the sustainability of the mining projects. It is recommended to use of following indicators for sustainability in the Strategy: - Percentage of people living above the poverty line, especially in countries where extraction of natural resources takes place and export of commodities is the main driver of economic development; - Percentage of properly re-cultivated closed down mines; - Percentage of mining waste facilities in compliance with their discharge permits and with relevant legislation for management of mining wastes, e.g. the EU Directive 2006/21/EC; - Presence of an effective monitoring system for mining waste facilities – in use and	Comments noted. The Bank is currently working on indicators in a number of areas, including environmental and social.

<sup>2</sup> Available at <http://www.ebrd.com/downloads/research/policies/2008policy.pdf>.

<sup>5</sup> Available at: [www.ebrd.com/pages/country.shtml](http://www.ebrd.com/pages/country.shtml).

<sup>3</sup> Available at: <http://www.ebrd.com/downloads/research/annual/fr11e.pdf>.

Ref.	Issue	Comment	Response
		abandoned - and health monitoring of population exposed to the negative impact of extractive industries facilities.	
1.2	Alternative development	The Bank should consider alternative scenarios for development of natural resources sector, other than mining in the Bank's Countries of Operations (COOs).	The question of diversification away from the mining sector is addressed in EBRD's country strategies.
1.2	Coal Mining	<p>The Strategy should be delayed and run with the revision of the Energy Operations Policy so as to make explicit the reasons to move out of coal.</p> <ul style="list-style-type: none"> <li>- The Strategy does not explicitly address the Bank's position in financing coal mining activities.</li> <li>- The Strategy does not exclude financing for coal mining, nor does it even indicate the desirability of decreasing financing for such activities, but the Bank has a crucial goal of promoting a transition to a low-carbon society.</li> <li>- Question of why coal mining is addressed in the Strategy is raised as the Bank is using public financing from countries trying to remove carbon emissions.</li> </ul>	Comments noted. The Policy does not address the Bank's investment position regarding thermal coal. The 2006 Energy Operations Policy (EOP) <sup>4</sup> , planned to be revised in 2013, will address carbon-related issues such as the impact of thermal coal combustion on climate change, its role in the energy mix and its contribution to energy security in certain of the Bank's COOs.
1.2	Coal mining	The Bank has to establish in the Strategy the link of financing coal mining activities with the implications of its use, be it thermal coal or coke in steel processing. The assessment of an application for financing of mining activities cannot be treated in isolation of use of mined product, and a clear link to the EOP of the Bank has to be developed.	The Policy addresses the uses of coking coal but leaves it to the 2006 EOP and its planned revision to address the implication of the uses of thermal coal in the context of the energy sector.
1.2	Hydrocarbon extraction	It is suggested to add the following paragraph under the subtitle of 'Ores and minerals covered by the Strategy' in Section 1.2 - "The Strategy covers mining of all ores and minerals except unbonded asbestos, any production or use of which is excluded from Bank financing by the Exclusion List in the Bank's ESP. The Strategy does not cover the extraction of hydrocarbons such as oil, gas and coal, which are covered in the Bank's Energy Operations Policy approved in 2006 with carbon-related issues of thermal coal, will currently continue to be covered by the Energy Operations Policy. The Bank will not provide finance for coal mine projects that imply expansion of the facilities. Financing for improvements of EHS&S may take place as long as they do not result in the prolongation of the facility's operation or increases in production, and if the client's obligations are explicitly written in the contract and results transparently reported to the public."	Comments noted. The Policy does not address the Bank's investment position regarding thermal coal. The 2006 EOP, planned to be revised in 2013, will address the issues related to thermal coal.
1.2	Greenfield projects	- The Bank should consider more co-extraction and focus on reducing the impact of existing operations but not to invest in	Comment noted. As presented in section 1.8, the Bank believes there is a rationale to invest in greenfield - as well as existing mining projects.

<sup>5</sup> Available at: [www.ebrd.com/pages/country.shtml](http://www.ebrd.com/pages/country.shtml).

<sup>4</sup> Available at: [www.ebrd.com/downloads/policies/sector/powerenergy.pdf](http://www.ebrd.com/downloads/policies/sector/powerenergy.pdf).

Ref.	Issue	Comment	Response
		greenfield projects. - The Bank should focus on brownfield but not green field mining projects.	
1.2	Country Strategies	- The Strategy should be more precise about the Bank's involvement in the sector and link that to country strategies.  - A link between the Strategy and the Bank's country strategies should be better explained in the Strategy. It is not clear from the Strategy if the country strategies are aligned with other EBRD strategies/policies/guidance documents, including the Mining Strategy.	The Policy is intended to provide guidelines as to how the Bank should be involved in the mining sector for the next few years. It is not intended to identify what projects will be financed but rather to establish a framework for EBRD investments in the sector. All existing country strategies were taken into account when drafting the Policy. Likewise, revisions of the country strategies will incorporate the operational priorities outlined in the Policy, where appropriate. The country strategies most relevant to mining are referenced in section 1.2. The wording in the revised Policy has been amended in response to the comment.
1.2	Country Strategies	- It is suggested to use democratic engagement based on the principle of subsidiarity to show how policies are 'operationalised' on the ground as the key determinant of success.  - The Bank should not support dictatorship.	Democratic engagement or the level of political oppression are not criteria used by EBRD to measure the success of each specific project or of the implementation of a sectoral operations policy. EBRD's country strategies present political assessments of each COO, which will condition the level of involvement the Bank may have in each COO.
1.2	Country Strategies	The question of what is covered in the country strategies is raised.	Revisions of the country strategies will take into account the operational priorities outlined in the Policy, as appropriate. Country strategies are available on the EBRD web-site under each country <sup>5</sup> .
1.2	Country Strategies	It is suggested that the Strategy should be more country specific.	Different priorities will apply to different countries, so would not be feasible to include in a sectoral Policy.
1.2	Definition	Terms like "transparency", "social responsibility" and "sustainability" are used but not defined in the Strategy.	These terms are defined in other Bank documents, such as the PIP and the ESP.
1.2	Gold mining	It is suggested gold mining should be stopped since only 11% of its production is for industrial use.	Comment noted.
1.2	Language	It is suggested that the Strategy should be translated into official language of the Bank's COOs.	In line with the PIP the Policy will be published in English and Russian. There will be a section on mining in relevant country strategies, which will be translated into the official language of the COO. Information on mining and the Bank's objectives specific to a COO will therefore be in local language.
1.2	Language	The Russian translation of the Strategy should better reflect the nuances of the English terms used.	The comments will be considered for the Russian version of the final Policy.

<sup>5</sup> Available at: [www.ebrd.com/pages/country.shtml](http://www.ebrd.com/pages/country.shtml).

Ref.	Issue	Comment	Response
1.2	Definition	There is no definition of responsible mining. It is also not specified how it is going to be implemented. A definition of "responsible mining" should include operational best practice standards consistent with the goal of delivering net environmental and social benefit and a transition to a carbon contained future.	A definition has been added in the revised Policy. The Bank has not found a universally accepted definition of "responsible mining". The expression has been used in different contexts, such as by the World Bank in its 2005 Extractive Industries Review (EIR, Volume 1) <sup>6</sup> or by a coalition of CSOs which defined a "Framework for Responsible Mining" <sup>7</sup> .
1.2	Referencing	Web links to external documents referenced in the Strategy should be provided.	The revised Policy presents the relevant web link of each document mentioned in a footnote, when the document is mentioned for the first time. In particular section 1.2 provides web links for a number of EBRD documents relevant to the Policy.
1.2	Scope	It could be useful to have a map that connects the various guidelines and policies related to mining from different institutions in the Strategy.	The relationship between the Policy and the other EBRD documents is presented in section 1.2. It has been considered that it would be difficult to represent graphically the interdependence between these documents.
1.2	Scope	The overall language used in the Strategy is very generic with no specific reference to any locations or projects.	The Policy applies to all COOs, and it is complemented by each country strategy. It also applies to a wide range of mining and quarrying projects. This explains the deliberately generic approach, which enables the Policy to cover the widest scope of mining activities.
1.2	Scope	The Strategy touches on all policies that are currently in place, but does not give information about how any of these will be implemented.	All EBRD policies will be implemented; policies normally have a reporting requirement, and the annual reports for the ESP and PIP, for example, are on the Bank's website.
1.2	Scope	The Strategy is among a number of other EBRD policies or strategies, it is not clear what the new document adds to.	This is the first EBRD operations policy document dedicated to investment in the mining sector. Mining is complex and so it was felt that the Bank's activity warranted further comment. The Policy differs from the Bank's policies - it outlines the Bank approach in investing in the sector rather than setting out a set of rules. Governance policies, such as the PIP and ESP apply across all sectors and the Policy is not intended to replace these, but draws out issues specific to the sector.
1.2	Scope	The Strategy does not cover oil and gas activities.	Oil & gas and power are covered in EBRD's 2006 EOP, to be updated in 2013.
1.2	Small mining companies	The Bank should ensure the Strategy is applied to all mining companies, even small and local ones.	The Bank's requirements apply to all direct investment projects, regardless of size.
1.2	Processing	- Coverage of the Strategy is limited to certain metals and does not cover value added processing.  - The Strategy should include smelting.	As presented in section 1.2, the Policy covers basic processing of ores and minerals, including in some cases refining and manufacturing investments. This includes smelting if it is related to a mining activity, such as, for example, part of the same operations or located on the same site. The Bank looks at the value chain and at mining projects to develop small and medium enterprises, utilities and transport infrastructure.

<sup>6</sup> Available at:  
[irispublic.worldbank.org/85257559006C22E9/All+Documents/85257559006C22E985256FF6006843A/B/\\$File/volume1english.pdf](http://irispublic.worldbank.org/85257559006C22E9/All+Documents/85257559006C22E985256FF6006843A/B/$File/volume1english.pdf)

<sup>7</sup> Available at [www.frameworkforresponsiblemining.org/index.html](http://www.frameworkforresponsiblemining.org/index.html).

Ref.	Issue	Comment	Response
1.2	Smelting	It is suggested that the Bank should focus on smelting in Mongolia especially on the national policy in smelters construction.	Comment noted for consideration in the country strategy for Mongolia.
1.2	Stabilisation funds	EBRD may not have a capacity to advise on establishment of sovereign wealth funds, but may be in position to use its leverage with Governments on this matter. The Bank should at least have a policy to include this during policy dialogue as part of integrated approach, and possibly also mechanism to collaborate with partners to support Governments.	The question of EBRD's relationship with sovereign wealth funds in its COOs is addressed in the country strategies, which determine the level of involvement the Bank may have in each COO.
1.2	Uranium	It is recommended the Strategy should endorse total exclusion of investment in uranium.	Comment noted; however, the question of nuclear power will be further addressed in the revision of the EOP expected in 2013.
1.3	Project Portfolio	In section 1.3.2, it is unclear what is 'project support'; and the pie charts are 'obscure' in presenting data about the financed mining projects. For example, it appears to be unclear how much was lent to Mongolia from the EBRD TC and ETC funds for "regulatory support".	In section 1.3.2, figure 1.5 presents the different types of Technical Cooperation projects financed since 1999. Over the 19 projects financed, 26% were for project support, which means that they were related to EBRD work on a project. This can include, for example, financing environmental due diligence or the supervision of project implementation. ETC funds invested and EBRD's Shareholder Special Fund invested EUR 1.5 million and EUR 1.1 million, respectively, in TC funds used in Mongolia. These TC funds were used to support the government for capacity building for EITI (see Case Study 1 in section 3.3) as well as to finance the establishment of a digital geological information systems data base within the MRAM.
1.3	Project Portfolio	More detailed information should be provided regarding the Bank's indirect investments in mining and quarrying projects via financial instruments, such as equity funds, TFP and financial institutions.	The Bank is unable to provide a detailed analysis of the Bank's indirect financing in mining projects as financial intermediaries do not report to the Bank in that level of detail. For example financial intermediaries do not report to EBRD on SME loans to mines and quarries below USD 200,000.
1.4	Environment	Key environmental issues should be listed in Section 1.4	Section 4 discusses key environmental issues.
1.4	Inaccurate information	The 'excellent' rating for the project in Kazakhstan quoted in Section 1.4 is questioned.	Comment noted and to be considered by EBRD's Evaluation Department.
1.4	Transition	Information on transition accreditation in section 1.4 is of little use without revealing what the specific projects are.	Comment noted. The intention was not to present individual projects in the Policy, but rather to present a picture of the Bank's past investments in mining.
1.6	Human Rights	At the start of the Strategy there is a reference to United Nations Guiding Principles on Business and Human Rights <sup>8</sup> . However, the document does not reflect this and does not suggest ways to incorporate these developments into the Bank's policies and strategies.	Comments noted.

<sup>8</sup> Available at [www1.ifc.org/wps/wcm/connect/c3dedb0049c51e71886d99da80c2ddf3/UNGPsandIFC-SF-DRAFT.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/c3dedb0049c51e71886d99da80c2ddf3/UNGPsandIFC-SF-DRAFT.pdf?MOD=AJPERES).

Ref.	Issue	Comment	Response
1.6	International Standards	The Strategy should be more specific about the types of policies EBRD will seek to support, taking into account existing best practices, such as those articulated by the Natural Resource Charter <sup>9</sup> .	As presented in section 1.6, the Bank has taken stock of recent developments of international standards and initiatives, including from the International Finance Corporation (IFC) or the International Council for Metals and Mining (ICMM). This included the Natural Resources Charter.
1.6	Wording	Section 1.6 comes across as derogatory to in-country mining companies stating that international companies operate to a better standard.	This has been changed in the revised Policy.
1.6	Wording	In section 1.6, it is suggested to use 'fair' instead of 'fairer' when describing share and distribution of wealth, as 'fairer' may imply existing arrangements in the mining industry are 'unfair'.	This has been changed in the revised Policy.
1.7	Diversify investment	The COOs are increasingly dependent on mining and it is a concern to see uncontrolled development. The Bank should look to diversify the economies of COOs.	Comments noted and more clarity will be given regarding sector investment in individual country strategies.
1.7	Economics	It is suggested that section 1.7 should be rewritten to include the macro-economic impacts of mining.	Specifics of macro-economic impacts are addressed on a country-by-country basis in the country strategies
1.7	Economics	The Strategy needs to identify countries which are over-dependent on commodities (or may become so) and de-prioritise them for investments into mining and infrastructure related to mining for the development of the other economic sectors that will bring long-term sustainability to the region.	The Bank has one set of requirements that apply to all COOs. These questions are best addressed in country strategies.
1.7	Economics	The Strategy should introduce an indicator measuring the sectoral investment balance and a target that investments in natural resources projects and related infrastructure should not amount to more than 30% of the portfolio for a country, in order to ensure support for diversification away from resource extraction and commodity export dependence.	Comment noted. The Bank's view is that this question should be considered on a country-by-country basis, rather than establishing generic indicators.
1.7	Natural resources	The Bank should consider the negative impact in the long run in strengthening the mining sector (e.g. dependency on a finite and exhaustible resource).	The EBRD is sensitive to the issue of deepening dependency, but recognise the ability to transfer skills across industries and the macro-economic benefit of mining.
1.7	Revenue distribution	There is no clear definition of what constitutes 'fair' or 'equitable' distribution of wealth related to mineral resources.	Comment noted.
1.8	Lessons Learned	The Strategy only partially reflected the recommendations and conclusions of the 2011 Evaluation Department's Extractives Industries Sector Strategy Review of internal data capture difficulties making bank-wide extractive industries portfolio analysis not possible.	The Policy presents in sections 1.3 and 1.4 the result of internal data processing, which had not been done at the time of the Evaluation report.
1.8	Resource efficiency	It is suggested the Bank should move away from mining and extraction and move towards resource efficiency.	The Bank's approach is to support actively resource efficiency as outlined in section 3.6, while also supporting mining projects as supported by the rationale outlined in section 1.8.

<sup>9</sup> Available at <http://naturalresourcecharter.org>.

Ref.	Issue	Comment	Response
1.9	Coordination with IFIs	The Bank is in a position where it can coordinate and influence government and industry and should improve their work in co-operation with other International Financial Institutions (IFIs) in relation to the Strategy or relevant activities.	There are formal initiatives bringing IFI together and there is awareness that development challenges need to be brought together. Yet it is recognized that it is difficult to formalise coordination particularly where there are differing mandates. The Bank tries to be practical and where there is an intervention in a given COO it will work with those involved to see where there is scope for EBRD involvement to be complementary.
1.9	Partner banks	The Strategy does not specify the approach of the Bank to partner banks if they invest in mining. It suggests that the Bank would require from partner banks to follow the Bank's approaches and Mining Strategy principles.	The requirements that the Bank has for financial intermediaries is addressed in the ESP and Performance Requirements (PR) 2 and 9.
2	Transition Challenges	The Strategy argues that "despite two decades of reforms, significant transition challenges remain in the mining sector throughout the EBRD region". It is unclear whether any cross-sector analysis is made by the EBRD to establish whether transitional change is more difficult in the mining sector.	EBRD performs an assessment of transition challenges (ATC) for all sectors in which it is involved. As such, as published in the Transition Report, it is possible to identify at which stage of the transition process the country lies for the Natural Resources sector and to compare it to the status quo in other sectors.
2	Wording	Paragraph 2 in Section 2 states that "the ATC is based on the evaluation of the size of the remaining reform challenges in two main areas: market structure and market-supporting institutions and policies". Suggested revision: "...challenges in three main areas: market structure, market-supporting institutions and policies and stakeholder engagement mechanisms".	The ATC for each sector follows an established methodology with analysis along various dimensions that are grouped under two main areas labelled 'Market Structure' and 'Market-supporting Institutions and Policies'. Involvement of civil society and an open and transparent consultation processes are an element taken into consideration in the ATC and are included in the second area.
2	Wording	Section 2: It is suggested to add "- develop mining and EHS&S legislation in line with international best standards to ensure an effective implementation of the environmental and social safeguards"	Comment noted.
2	Wording	Paragraph 3, Section 2: it is suggested to add "In general, in the most advanced countries of CEB, legislation addresses issues such as occupational health, labour and freedom of association rights and the right to strike,...."	Comment noted.
3	General	The Strategy should be more precise in stating the Bank's objectives but no need to state the Bank's approach.	The Bank Approach in each subsection of section 3 outlines EBRD's operational priorities for all its projects in the mining sector. These should be considered as the Bank's objectives.
3	General	Discussion on topics including transparency, country or sector governance, environment and safety, climate change, benefit sharing are very vague for the most part in the Strategy.	The Policy is intended to apply to all its mining projects in every COO. As such these topics will be more clearly articulated in specific project summary documents and in the country strategies as they apply to that particular country.
3	Strategy Implementation	The question of how the Strategy is going to be implemented is raised.	Sections 3 and 4 present how the Policy will be implemented.
3.1	Capacity building	The use of expatriates could have potentially negative impacts and mining companies are not always building local capacity. The question of how the Bank addresses this issue is raised.	The Bank recognises that (1) expatriates can introduce expertise, technology and project management experience into the country, but (2) it requires capacity building efforts for the knowledge transfer to be done. The Bank therefore will support the use of expatriates (1), if there is an opportunity

Ref.	Issue	Comment	Response
			for a comprehensive knowledge transfer (2).
3.1	Definition	The term 'resource nationalism' should be better defined in the Strategy.	Comment noted.
3.1	Privatisation	The Bank should recommend in the Strategy a process for privatisation that is fully transparent, with consultation and robust safeguards.	The wording in the revised Policy has been amended to account for the comment.
3.1	Small mining companies	The Bank should be setting high standard for both small companies and large corporates in the mining sector. Higher standards and benchmarks for responsibilities, in terms of technology, transparency, and communication.	The Bank's requirements apply to all direct investment projects, regardless of size.
3.1	Small mining companies	It is felt that the Strategy is geared towards international companies, not smaller ones. The question of whether the Strategy is also appropriate for smaller domestic companies is raised.	The Bank's requirements apply to all direct investment projects, regardless of size.
3.2	Best Available Technology	The Strategy should define Best Available Technologies.	Best available techniques are defined according to the EU and best international practice. A sector operations policy would not be the appropriate place to include these definitions.
3.2	Best Available Technology	In section 3.2 in the Bank approach it is suggested to include at the end of the first bullet the following: 'For the smaller COOs only best technologies will be adopted by the Bank.'	The Bank has one set of requirements that apply to all COOs. It does not differentiate between countries.
3.2	Resource efficiency	It is suggested that in Section 3, the Bank should emphasize more the aspect on resource efficiency taking into account worldwide commitments and proposals for a transition to a sustainable and resource efficient economy, in order to ensure the integration of the reduce-reuse-recycle principle in appraisal, reporting and monitoring of the projects.	This issue is part of the ESP's PRs. This comment would be more appropriately submitted for consideration in the ESP review in 2013.
3.2	Technical assistance	The magnitude of technical assistance is not specified in the Strategy. It is unclear from the document if that will be scaled up and will there be any potential conflict of interest.	The amount of technical assistance will depend on the opportunities which arise over the next few years and on the donor funding available at that time. The Policy is intended to define priorities as to which types of TC projects should be financed.
3.3	Bank approach	It is suggested to provide examples on how the Bank intends to "act as an honest broker between governments, companies and CSOs to improve transparency in all aspects of mining operations" (for example, education programmes, consultations with expert community etc) and "promote with the relevant authorities the introduction of fair and transparent procedures for awarding and monitoring licences".	A sector operations policy is not normally a good place for detailed examples. The Bank's publications, such as its 2011 Annual Report <sup>10</sup> normally highlight examples of projects.
3.3	Corporate Governance	It is suggested that more explanation is given for the Bank Approach. For example, a statement that "the Bank will implement best international corporate governance standards in its investments" comes across a bit vague,	The wording in the revised Policy has been amended in response to the comment.

<sup>10</sup> Available at <http://www.ebrd.com/downloads/research/annual/ar11e.pdf>.

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		some examples would help.	
3.3	General	The Bank's priority in the Strategy should be to support improved transparency and capacity building in local administrations.	The wording in the revised Policy has been amended in response to the comment.
3.3	Revenue distribution	The Strategy should be clear on equal distribution of revenue and how the people benefit from revenue.	Comment noted. On transparency the Bank's focus is on how transparent governments are with their fiscal revenues. The question of how governments spends its budget and reallocates funds is not in the scope of the Policy.
3.3	Revenue Management	Revenue management should be carefully implemented to ensure no long term economic risks.	The question of how governments spends its budget and reallocates funds is not in the scope of the Policy.
3.3	Tariff	The Strategy perceives increasing tariffs as negative but tariffs are higher in western countries (e.g. Norway). Tariffs are not intrinsically bad but they are poorly used so it's more a cases of positive distribution of the revenue from tariffs.	Tariffs and other distortions limit free trade, competition and free entry in the mining sector and as such are seen as detrimental to its development.
3.3	Transparency	It appears the Strategy has not taken into account many of the developments in policy over the last several decades, including transparency, nor does it address the inadequacies of systems such as the Extractive Industries Transparency Initiative (EITI).	EBRD was one of the first IFIs to support EITI globally and coordinates its effort with the World Bank. The Bank is currently developing capacity building programs (see case study 1 in the Policy) to disseminate information on what EITI is.
3.3	Transparency	It is suggested the Bank spell out in the Strategy why transparency is important - that it is fundamental to accountability and less corruption.	Sections 1.6 and 3.3 and Annex 4 present the Bank's approach to transparency in the extractive industries, which is also outlined in other EBRD policies and strategies.
3.3	Transparency	<ul style="list-style-type: none"> <li>- EBRD should, at minimum, match the contract and revenue disclosure standards established by the IFC Sustainability Framework, and ensure that the project transparency requirements laid out in the Energy Operations Policy (2006) are applied to sectors covered by the Strategy.</li> <li>- The question of why the Strategy deviates from existing standards of IFC is raised.</li> <li>- The Strategy does not accurately reflect the IFC's initiative in areas of transparency in recent years.</li> </ul>	EBRD does not commit to IFC standards, but rather its own standards, which are based on national, EU, and best international practice. Regarding transparency standards the Bank's focus has been to put a priority on improving the existing standards of disclosure of payments and reporting of fiscal revenues to expand to its COOs the principles of current best international practice, (e.g., the US Dodd-Frank Act, the draft EU regulation on transparency). The Bank will continue to work on building capacity within governments to implement the EITI.
3.3	Transparency	<ul style="list-style-type: none"> <li>- More elaboration on transparency and EITI is needed in the Strategy.</li> <li>- The Strategy is not clear on the mechanisms to achieve the transparency and disclosure objectives.</li> <li>- The section on transparency is vague – and mostly makes reference to external frameworks. There are no concrete commitments or actions that the Bank is planning to incorporate into their operational policies/rules of doing business.</li> <li>- The question of what will the Bank be doing specifically to facilitate the implementation of</li> </ul>	The wording in the revised Policy has been amended to make the objectives more specific. The Bank requires mining companies to disclose payments to authorities, but will consider as to how much detail should be included in this document as to granularity on a project-by-project basis. Other Bank actions include using technical cooperation (TC) funds to build capacity within the authorities following the example of Mongolia, which could be replicated and expanded to other COOs (see section 3.7.3 on TCs).

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		measures to achieve transparency, in respect of items such as regulatory requirements, taxation, royalties, fees, bonuses – and production metrics such as volume or cost is raised.	
3.3	Transparency	In the Bank's Energy Operations Policy it is stated that 'the Bank will require project sponsors to publicly disclose their material project payments to the host government as a minimum revenue transparency condition', however, under the Strategy in Section 3.3, the Bank will only 'encourage its clients to implement principles and criteria of the EITI.' The question of the change in approach is raised.	Comment noted—the wording in the draft Policy has been revised to harmonise with the 2006 EOP wording.
3.3	Transparency	The example on Mongolia is very good but it is a little heavy on process and the support from the Bank and the World Bank, with the substance not quite clear. It is suggested to start off with what EITI may have achieved then go on to say that it would not have been done without the Bank's support.	The case study on Mongolia is intended to illustrate in a concrete way what the Bank has done to complement the principles outlined in section 3.3. Further details on the substance as to how Mongolia is implementing EITI can be found on the EITI's website <sup>11</sup> . An update will be also presented in the revision of the country strategy for Mongolia.
3.3	Transparency	- There is little focus on mechanism for implementing contract transparency within the Strategy. - The Bank should require all its extractive industry clients, including those receiving investments governed by the policies set forth in the Strategy, publicly disclose their contracts with host governments.	The Bank's focus has been on improving the existing standards of disclosure taking into account changing best practice (e.g., the recent US regulation on disclosure (Dodd-Frank Act <sup>12</sup> ) and of the draft EU regulation on transparency), rather than expanding the scope of the disclosure to contracts. The Bank's approach is to support in priority an improvement in the implementation of payment disclosure.
3.3	Transparency	There is limited knowledge of EITI in many countries, especially in Mongolia, the Bank need to ensure the requirements is well understood by stakeholders.	As presented in section 3.3 the Bank will engage in an active policy dialogue with national and subnational authorities to help governments understand and build capacity to implement EITI.
3.3	Transparency	- The Bank should commit that starting from a defined date in the future, they will not support mining projects in countries that are not the member of EITI. - The Bank should withhold funds unless countries demonstrate that they are making moves towards or create a timeline for implementing the EITI.	Comments noted. The Bank's approach has been to support its COOs in the process of applying to become EITI candidate and then compliant countries, rather than have an exclusive approach. Given the Bank's project-driven approach its focus has been to require clients to disclose payments even in countries which have not yet adopted EITI or have too limited extractive resources to meet the criteria of EITI.
3.3	Transparency	International mining groups required to disclose would have a negative competitive advantage versus local operators which would not disclose and could be "targeted" by the general public.	Comments noted.

<sup>11</sup> Available at: [www.eiti.org](http://www.eiti.org).

<sup>12</sup> See Article 1504 at: [www.sec.gov/about/laws/wallstreetreform-cpa.pdf](http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf).

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3.3	Transparency	On the issue of transparency of open tendering and bidding, in the case of mineral licenses, auctioning mineral exploration licenses often leads to far less value to the host country. The system that demands expenditure in the ground and which provides guaranteed priority rights on conversion from prospecting lease to mining lease is preferred, e.g. Canada and US.	Comments noted. The Bank supports license attribution methodology, which are the most conducive to developing mining assets in a responsible way.
3.3	Transparency	<p>- The Strategy should require that companies funded by the Bank allow access to all information related to the mining projects (presumption of disclosure), and subject only to a limited set of exception. The exceptions should be clear and as narrowly drawn as possible and easy to interpret.</p> <p>- The EBRD should require specific reporting measures on ore grades, volumes, valuations and waste mitigation as mandatory loan conditions in advance of the EITI agreeing to these requirements.</p>	Section 3.3 of the Policy complements the transparency requirements of the ESP by requiring to publish payments made and corporate responsibility reports. The Bank is also aware of the necessary confidentiality that is required to run a mining business on a commercial basis. This balance is made on a project-by-project basis, which cannot be defined in the context of the Policy.
3.3	Transparency and reporting	<p>The following requirements should be implemented:</p> <ul style="list-style-type: none"> <li>• All types of material project payments from extractive industry operations to the government be disclosed, including, inter alia: royalty payments, taxes, profits/dividends, commodity-based payments, signing bonuses, pipeline/transit tariffs, acreage fees, rental fees, and social development funds;</li> <li>• Revenue disclosure be reported according to payments made to each level of government, e.g federal government, regional/state government, and local municipalities;</li> <li>• Revenue disclosure must be done on a project-level, on annual basis and in timely manner.</li> <li>• EBRD should develop minimum reporting requirements for (where applicable): production volumes, production revenues, with separate disclosure of production revenue attributable to sales to external customers and transfers to downstream operations; costs (development and production) and reserves (volumes and values).</li> </ul> <p>This information should be made available by project sponsor for publication on EBRD's website in a timely and comprehensive manner, and should be linked to other project information and documentation required by the Bank (relevant project summary document).</p>	Comment noted. This covers a wide scope of elements to disclose including most of the different taxes and royalties paid by mining companies. The specific scope and standards of disclosure will be further developed beyond this Policy in coordination with EITI Secretariat.

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3.3	Transparency	The EITI has not established detailed standards for reporting of payments made by extractive companies to host governments. It has therefore been difficult for independent auditors /administrators to define commonly accepted standards for the reports. This has led the reporting for each country to be of varied quality and detail, making disclosures difficult to compare from one country to another and some countries going through the validation process with a poor level of reporting.	The Bank will continue to focus on improving the existing standards of disclosure taking into account changing best practice (e.g., the recent US regulation on disclosure (Dodd-Frank Act <sup>13</sup> ) and of the draft EU regulation on transparency). This will be done at the project level through EBRD financing and at governmental level through policy dialogue. Cooperation will be further strengthened with the EITI Secretariat in that regard.
3.3	Transparency and reporting	The Strategy recognises the importance of improving revenue transparency standards in its COOs, and commits the EBRD to promote and encourage adherence to best practice among its clients, however it fails to articulate strong safeguards for its own lending. The EBRD should define clear minimum revenue reporting requirements for its extractive industries project investments.	As outlined in section 3.3 the EBRD will require disclosure in line with the standards defined by the EITI Secretariat and the EU directives in preparation.
3.4	Wording	In section 3.4 the example given of 'windfall taxes' may imply that taxes can and should only move upwards.	This has been reworded to dispel any confusion.
3.4	Sustainability	The Strategy must include in Section 3 lessons learned from "sustainability funds" implementation.	Comments noted.
3.4	Aarhus Convention	The Strategy is weak in addressing the issue where national regulations are not aligned with international conventions like the Aarhus Convention <sup>14</sup> . The Bank should make a statement that investment will be directed to compliant COOs.	The Bank's ESP commits to the spirit and principles of the Aarhus Convention, and applies to all projects. The requirements of PR 10 on Information Disclosure and Stakeholder Engagement are reviewed carefully on any extractive industry project.
3.4	Environment	The Strategy should further explain how mitigation hierarchy is implemented.	See the ESP for details of mitigation hierarchy.
3.4	Environment	It is suggested that the Bank should use European Union's guiding principle of precautionary principle rather than 'no net loss' in regards to potential environmental damage.	The ESP Performance Requirement 6 explicitly requires adherence to the precautionary principle.
3.4	Green Economy	There is no linkage to the idea of Green Economy in the Strategy.	Comments noted.
3.4	Integrated approach	A more clear specified design of the approach is required (or annexed if it already exists), including instructions for staff on how to ensure it in each COO.	Comments noted.
3.4	Legal and Regulatory Framework	The Strategy should be more specific about the types of policies it will seek to promote relative to legal and regulatory regimes, taking into account existing resources and best practice principles, such as those outlined in the Natural Resource Charter.	Comments noted.
3.4	Legislation	The Bank and the companies it finance should be fully public about any advice they give to the states on national laws.	Each EBRD project is disclosed in a Project Summary Document on the Bank's website.

<sup>13</sup> See Article 1504 at: [www.sec.gov/about/laws/wallstreetreform-cpa.pdf](http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf).

<sup>14</sup> Available at [www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf](http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf).

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3.4	Legislation	The Strategy should address the issue of the potentiality of gaps between national requirements and the Bank's requirement on social and environmental issues.	<ul style="list-style-type: none"> <li>• EBRD requirements need to be applied across all countries--all projects need to meet the same standards, and the driving force is to meet EU standards, where they can be applied at the project level, and international best practice, wherever the project is located;</li> <li>• In supporting projects, we have to respect both national and international regulatory framework – even where a country is not a signatory to any given regulation; and</li> <li>• In general, EBRD requires whichever is more protective, national law or EBRD requirements. Only if there is a direct conflict between a less protective provision of national law and a more protective EBRD requirement would EBRD choose the less protective requirement</li> </ul>
3.4	Legislation	The question of how the Strategy will harmonise with the national law of COOs is raised.	The Bank does not harmonise with national law, but reviews it as part of due diligence on a particular project. The Bank's approach is harmonised across projects and countries by implementing the ESP. The most stringent standard between national law, EU environmental law, and good international practice applies.
3.4	Legislation	The Bank should support robust enforcement mechanisms in the areas of social and environmental protection, including through technical support and assessments of corporate influence on the regulatory bodies.	Comment noted.
3.4	Licenses	Mining concessions paid should be equitable to the value gained from resource extraction.	The Strategy outlines the Bank's aim to promote with the relevant authorities the introduction of fair and transparent procedures for awarding and monitoring licences.
3.4	National requirements	There are gaps between performance requirements and national guidelines. It is important the Strategy reflects local legislations, but the Bank should not make this obligatory.	Comment unclear--see response above regarding national law.
3.4	Policy dialogue	The Strategy emphasised policy dialogue but it is not clearly articulated particularly for sector governance, transparency and revenue management by governments.	Comments noted.
3.4	Project Agreements	Many countries have standardised or model agreements which still leave space to negotiate project specificities, but this approach does not appear in the Strategy.	In section 3.3, the Bank confirms its support to fair and transparent procedures for awarding and monitoring licences.
3.4	Regulatory framework	It is not detailed in the Strategy how the Bank intends to render technical assistance to provide a more reliable regulatory framework.	Comment noted and would be more appropriate to be made on an individual country strategy, with regard to lack of legislation and need for capacity building.
3.4	Regulatory framework	It is suggested that in Section 3.4, under the Bank's Approach list the following should be added - "if changes in the mining-related legislation are to occur, they must not lower the environmental and social safeguard standards and must be openly and thoroughly consulted with the public."	As noted, the Bank requires the more stringent of national standards, EU requirements and best international practices. Only if there is a direct conflict between a less stringent national law and more stringent EU or international requirement would the less stringent requirement apply.
3.4	Regulatory framework	In relation to the regulatory framework, the Strategy mentioned reliable, transparent and stable frameworks, but is unclear exactly what that means.	Comments noted.

Ref.	Issue	Comment	Response
3.4	Responsible mining	It is suggested that the Bank to follow the recommendations of a new paper from Robert Goodland (one of the authors of the World Bank's Environmental Information Regulations) on Responsible Mining <sup>15</sup> .	Comment noted.
3.4	Tax system	Section 3.4 supports stable tax system and this should not deter flexibility within tax regime to allow for investment from the likes of Chinese companies in COOs.	Flexibility refers to stability of rules rather than lack of flexibility.
3.4	Training	It is not clear from the Strategy if it is the Banks' Strategy to provide advice or training on implementation of new laws through technical assistance to mining companies.	The Bank's requirements in the ESP PR2 on labour deal with training of workers. Technical cooperation is sometimes possible on certain issues. The Bank has provided, for example, capacity building on re-skilling workforces in extractive industries where there was major retrenchment planned.
3.5	Benefits from mining	The Strategy should outline that mining extracts revenue from ecosystems and the COOs fiscal regime, the Strategy should reflect this and impose measures on mining companies.	Comments noted.
3.5	Corruption	There is a problem of corruption in the value chain and a need for further investment in the value chain and this should be addressed in the Mongolia Strategy.	EBRD also considers financing for projects in the supply chain where it is satisfied that, local, relevant EU regulations and international best practice is demonstrated. The ESP clarifies supply chain requirements.
3.5	Social investment	The Bank should develop a methodology to support Public Private Partnership for social benefit and job creation for local communities.	Comments noted.
3.5	Value chain	The Bank should reconsider if developing the value chain is necessarily the best way forward.	Comments noted.
3.6	Carbon emission	The Bank should produce a projection of overall carbon output of its projects.	See requirements in the ESP.
3.6	Environment	The Strategy should address the need for clear impact assessment of financed activities relating to greenhouse gas emissions of allowable carbon budgets for regions and sectors.	See requirements in the ESP.
3.6	Green Economy	It is suggested that while mining cannot be part of a Green Economy, the Strategy is an opportunity to state how it can get closer to the idea.	The Bank has a role to play in supporting reduction of the environmental footprint of mining operations. Operational priorities and concrete measures are outlined in section 3.6 of the Policy.
3.7	Financial Instruments	There are no specific investment targets between debt and equity in the Strategy.	The Policy is structured on a project by project basis; the overall target for the Bank being 80% debt, 20% equity.
4	General	The Strategy appears to directly support mining itself without focusing on the social or environmental issues.	This section 4 of the Policy focuses directly on environmental and social issues and emphasizes that investments will be structured so that projects will be consistent with the Bank's 2008 ESP and associated PRs.
4	General	There should be direct commitments of the Bank in the Strategy.	The Bank has specific mandates, as summarized in section 1, and these are the fundamental commitments of the Bank. The Policy describes how the Bank will invest in this section in a way that helps achieve those mandates.

<sup>15</sup> Available at [www.uvm.edu/ieds/sites/default/files/Responsible\\_Mining.pdf](http://www.uvm.edu/ieds/sites/default/files/Responsible_Mining.pdf).

Ref.	Issue	Comment	Response
4	General	It is not clear why the Strategy homed in on specific topics but not others.	Many environmental and social issues are relevant to a variety of sectors, and the ESP would be applied in the normal way in the mining sector (e.g., indigenous peoples, resettlement). The Policy highlights those issues that are more specific to the mining sector to give more clarity on the Bank's approach (e.g, cyanide, closure plans, etc.)
4	General	The document is deemed too long and could be shorter as the Bank's ESP is already in place. It should simply state specific measures and what needs to be done.	The Strategy is not only about environmental and social issues, but the general EBRD approach to the sector. Comment noted.
4	Blacklist	The Bank should introduce a blacklist of companies which are non-compliant to environmental requirements.	Relevant compliance issues are brought to the attention of the management committees reviewing projects, along with risks, opportunities, and costs of action plans to address non-compliance.
4	Investment criteria	The Policy should be precise on what the Bank will and will not invest in.  The Bank should not provide financing to open pit mines.	Currently the ESP contains strict requirements for working in critical habitat and protected areas. Further, the ESP requires compliance with national legislation and therefore, if working in a certain area is prohibited by national legislation, this would also be prohibited by the ESP. This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4	Resource efficiency	The Bank should support innovation in resource efficiency. It is not specific on how the Bank will support companies to get more out of the reserves they currently have.	The Bank encourages such innovation. Recognizing this, it is important to note we generally finance Projects that are developed by the Client. The Bank supports the use of innovative technologies and the adoption of practices that result in more efficient resource recovery when they are part of a Project if they make economic sense and are consistent with the Bank's mandates. We note that the Bank can only fund 'proven' technologies, not experimental ones.
4	Targets	The Strategy should have more specific targets and requirement, e.g. water management requirements should be put in specific statement, like 20% of water to be cycled.	Each project is unique and the potential for improvement must be tailored to the project context and needs. It would not be appropriate to include specific targets.
4.1	Contractor management	The issue of contractor management is not addressed in the Strategy.	Comment noted. Contractor management requirements with regard to environmental and social issues are part of the ESP PRs.
4.1	Contractual agreements	With the use of Supplementary Lenders Implementation Practice (SLIP), there is a need to implement additional requirements beyond Environmental and Social Impact Assessment (ESIA) into contractual agreements or management plans.	The due diligence process, including the ESIA process and associated studies will identify environmental and social commitments that need to be incorporated into the contractual agreements or management plans. It should be noted, however, that the Bank sometimes is approached regarding a project when the agreements and plans are already in place, and in this case, a gap analysis is undertaken against the Bank's requirements to see what additional measures, if any, are needed.
4.1	Due Diligence	The Bank leaves it to the company to carry out due diligence and there is no defined process in the Strategy for the Bank to conduct independent due diligence or any adequate means for verifying the information provide by companies.	While the Bank requires the company to pay for due diligence, the Bank itself is responsible for carrying out due diligence, sometimes with the assistance of independent consultants.

Ref.	Issue	Comment	Response
4.1	Investment criteria	It is unclear from the Strategy whether or not there is additional lending for mining under the Direct Investment Facility (DIF), Direct Lending Facility (DLF) and Local Enterprise Facility (LEF).	Although unusual, there is no prohibition on mine financing under DIF, DLF, or other facilities. Most mine developments are naturally excluded because they typically require far greater financial resources than is available through the various facilities used by the Bank. Also, there is a requirement that DIF/DLF/LEF projects are not considered high risk, which excludes many mining projects. Regardless of the facility, projects are subject to the Bank's due diligence and are subject to ESP PRs.
4.1	Investment criteria	It is recommended that lending for mining projects under all financial instruments, including equity funds, financial institutions and Trade Facilitation Program (TFP) should be subjected to all the environment and social policies.	We note the request for high risk sectors such as mining to be subject to the full PR requirements, instead of just PR2 and PR9. This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.2	Assessment Hierarchy	It is unclear from the Strategy how the Bank evaluates its mining projects from initial screening through scoping to ESIA evaluation and negotiation of Environmental & Social Action Plan and/or /Environmental Management Plan and what tools are used.	The Environmental and Social Procedures explain the review process and tools.
4.2	Cumulative Impact Assessment	The Strategy does not mention the issue of cumulative impacts nor mention any requirements for cumulative impact assessment.	The ESP covers cumulative impact assessment.
4.2	EHS&S due diligence	The Strategy is not explicit in outlining the environmental and safety due diligence requirements and its approval process.	The Environment and Social due diligence process is defined in the ESP and in particular PR1.
4.2	EU standards	The use of European Union regulations as benchmark in the Strategy is good but the Strategy could be seen as overwhelming for some countries, e.g. Mongolia.	The EBRD uses one set of standards for all countries. It does not use a lower standard for countries in earlier stages of transition.
4.2	General	The Strategy would be a stronger document if it states where cumulative impacts can be reasonably expected, and if the Bank requires the client to take certain steps and play a delineated role.	See comment above.
4.2	Independent audit	The Strategy should address the issue of third party audit.	The ESP requires third party assessment of Category A and B projects where it is recognised that there is potential for significant risk or liabilities. This is now noted in the revised Policy.
4.2	Independent review	The Strategy should specify that independent review apply to both activities funded directly by the Bank and those by intermediaries.	This is equally relevant to all sectors, not only the mining sector. The language of the revised Policy now reflects the point made by the comment.
4.2	Landscape assessment	It is suggested that landscape planning or assessment at a strategic level should be required by all projects.	This is now noted in the revised Policy, where appropriate.
4.2	Monitoring and evaluation	It is not clear from the Strategy what is the selection criteria for project to be evaluated, and how many will be evaluated each year.	The Bank's Evaluation Department, an independent body reporting directly to the Board of Directors, has its defined methodology to identify projects to be evaluated.
4.2	Monitoring and evaluation	It is not detailed in the Strategy what is the control or monitoring process in place to ensure projects meets the requirements.	As noted in the Policy, projects are monitored for environmental and social performance at least annually by reviewing status reports on ESAP compliance and other key activities undertaken by the project. Category A and high risk projects are

Ref.	Issue	Comment	Response
			monitored by Bank staff or independent consultants regularly, including reports and site visits.
4.2	Monitoring and evaluation	There are plenty of experts in the civil society in environmental and social issues. The Bank should consider involving non-governmental organisations in the monitoring and evaluation of projects.	Monitoring is primarily the responsibility of the client. In some cases, the EBRD has encouraged clients to consider including experts from CSOs as participants in monitoring teams, where appropriate.
4.2	Monitoring and evaluation	Non-governmental organisation could be bridge between the government and the communities in joint government and non-governmental organisations monitoring.	See above.
4.2	Monitoring and evaluation	It is not clear what is the mechanism to monitor projects in the long term or post-closure.	Closure plans are required under EU law. This is to include provision of adequate funding, monitoring, restoration, aftercare and evaluation of environmental conditions post closure. As long as there is an active contract between a company and the Bank, the Bank will continue to monitor EHS&S performance at least annually, as noted in the Policy. Following repayment of the loan or sale of shares, however, the Bank does not normally have information or access to project sites.
4.2	Monitoring and evaluation	For Section 4.2, it is suggested at the commencement of projects, monthly monitoring meeting and report will be required, and after 6 months - quarterly monitoring of reports of mining zones.	The Bank determines the frequency of monitoring and reporting based on the circumstances of each project, with reports typically required each six months during construction and annually during operation but variable depending on the circumstances.
4.2	Monitoring and evaluation	There should be a much clearer commitment in the Strategy towards performance targets linked to environmental impact categories and regular reporting on progress against these targets for monitoring and accountability.	The responses to other comments emphasize that performance targets must be established for individual projects based on site-specific conditions, not established in a sector-wide Policy.
4.2	Project alternative	It is not clear what is the role of the Bank in selecting amongst different project alternatives.	EBRD's due diligence examines how the company has considered alternatives -- locations of facilities, technologies, sizes, timing, mitigation measures, etc. - in feasibility studies, ESIA's, and other project documentation. Where appropriate, the Bank may suggest other alternatives for consideration if this could improve the project's performance, including environmental or social performance.
4.2	Project alternative	The Strategy should make it obligatory to include analysis of alternative to the development of the mine; associated activities and best available techniques.	This is a requirement of ESIA process for Category A Projects and the new industrial emissions directive strengthens this. We note that the "no action" alternative is always considered, but it is important to note that it is not feasible to consider all associated activities, but rather a reasonable number of options should be evaluated. Where there is a clear BAT defined by the EU or best practice, the Bank typically requires it to be evaluated carefully.
4.2	Project alternative	The Strategy should require thorough assessment of the alternatives on project level including "no exploitation" alternatives.	See above.

Ref.	Issue	Comment	Response
4.2	Project Selection	The Strategy should include an explanation of how projects are assessed prior to selection	<ul style="list-style-type: none"> <li>• Any investment the Bank is considering needs to fulfil the key principles of the Bank's articles, i.e. support transition, additionality, and have sound banking principles. It also needs to meet minimum environmental standards.</li> <li>• Transition impact measured according to in house methodology, based on market structure / institutions (see Annex II, p. 2). A selection of projects is presented to the Board, who make a decision as to which projects are evaluated. This is done by the Evaluation Department (who report directly to the EBRD board. EBRD PR 1 determines how EHS&amp;S issues are assessed, and the EU EIA Directive and the Mine Waste Directive guide some aspects of project assessment.</li> </ul> <p>These principles above apply to all EBRD projects so are not outlined in the Policy.</p>
4.2	Project Selection	The Strategy appears simplistic in that the mining industry is very widely spread across geographies and sectors. It is not clear how the Bank would analyse the projects to ensure that every area the project has touched upon will be considered.	<ul style="list-style-type: none"> <li>• There are explicit guidelines for which projects are evaluated; the Board looks at projects after certain amounts of funds have been dispersed / or after certain timelines. Every project, after having met these criteria, can be forwarded for consideration.</li> <li>• The Bank's mandate is to support a transition towards a market economy and private sector operators. The Bank will identify those minerals / countries where there is significant state participation, in order to help transition from state-owned to privately owned companies, as appropriate. But operations are not a priori restricted to private sector opportunities; they may also include JVs with state and international operators.</li> </ul>
4.2	Reporting requirement	The Strategy should be more specific on the reporting requirements and the definition of public information.	The Bank believes this is more appropriately addressed on a project basis. The importance of reporting is emphasized throughout the Policy. The Bank's requirements on public information are in the PIP and the ESP (regarding environmental and social information).
4.2	Stakeholder Engagement	The Bank should increase involvement of CSOs in monitoring and checking the soil and water quality around the mining zones.	As noted in the response to comments above under Monitoring and Evaluation, the client is responsible for monitoring. The Bank has on occasion recommended to clients that they consider including appropriately qualified CSO representatives on monitoring teams. This issue is now noted in the Policy.
4.2	Wording	Section 4.2, Bank approach, it is suggested to add: "Review of and response to periodic monitoring reports on environmental and social performance and the statute of implementation of ESAP. At the starting stage monthly monitoring of the reports will be held and after 6 months - quarterly monitoring of reports of mining zones.	Comments noted. The Bank considers that reporting and monitoring are best established on a project basis.

Ref.	Issue	Comment	Response
4.2	Wording	Paragraph 3 Section 4.2: in line with the AA1000 Stakeholder Engagement Standards, the project appraisal process should start with the stakeholder engagement mapping and planning. Suggested revision: "Key elements during appraisal, therefore, include (i) fully developed stakeholder engagement mapping and planning; (ii) the assessment of environmental and social baseline conditions and potential impacts and issues associated with the proposed project.	Comments noted.
4.3	Civil Society Organisations	Civil society organisations'(CSOs) role in mining and related activities should be acknowledged in the Strategy.	Comments noted. The role of CSOs as stakeholders in a mining project is mentioned in section 4.3.
4.3	Civil Society Organisations	The Bank should assist CSOs in identifying opportunities for meaningful involvement in the planning and design to reduce impacts of mining activities which otherwise is difficult for them to be engaged in such activities.	The Bank's PR10 requires that key stakeholders be engaged as soon as practicable, including at the scoping stage in Category A projects. The timing and nature of such engagement is based on project-specific considerations.
4.3	Community	The Strategy should emphasise more on laws related to social and environmental protections and make them accessible to potentially affected communities, including information on how to make a complaint to an independent body if companies do not follow legal requirements. The Bank should ensure financial support is provided to such initiatives.	Comment noted. EBRD notes that all projects require stakeholder engagement plans, which include grievance mechanisms by which stakeholders external to the company can register comments and complaints and know that they will be addressed within a specific timeframe.
4.3	Environmental Health and Safety	It is suggested the following to be added to the text in section 4.3 - "In the case where a financial intermediary is considering a mining or quarrying investments the client company should have a plan to reach European Union environmental standards in its activities over time; newly constructed facilities should be designed to meet European Union requirements from the start. "	This comment regarding FI requirements would be more appropriately submitted for consideration in the ESP review in 2013.
4.3	Stakeholder Engagement	The Bank does not endorse best practice of Free, Prior and informed consent (FPIC) as other IFIs do.	EBRD's requirements for stakeholder engagement are in PR10 of the ESP. The Bank focuses on EU terminology and that of international conventions, such as Aarhus, and for this reason, there may be some differences between IFI terminology. EBRD requirements are largely consistent with other IFIs and do require consent with regard to indigenous stakeholders (see PR7).
4.3	Stakeholder Engagement	There is a need for more inclusive processes of preparation and more transparent reporting of progress on Environmental and Social Action Plans for mining projects both categories B and A. The Bank should adhere to the more inclusive processes of preparation and more transparent reporting of progress on Environmental and Social Action Plans for mining projects and the transparency standards and requirements for the Bank's clients to be further strengthened in the Strategy and in the forthcoming reviews of the PIP and ESP in 2013.	This comment would be more appropriately submitted for consideration in the ESP review in 2013.

Ref.	Issue	Comment	Response
4.3	Stakeholder Engagement	For section 4.3, it is suggested to add the following sentence to the 'Bank Approach' section - "Through active policy dialogue and technical cooperation support to the COOs and Governments, the Bank will promote the introduction of the Aarhus provisions into domestic legislation, inter alia, the Bank will support the creation of transparent and coherent legislative and regulatory frameworks for environmental decision-making with appropriate access to information and stakeholders engagement provisions as well as support institutional capacity building within the authorities to allow meaningful public participation in environmental decision-making".	EBRD does not have resources to make this kind of general commitment across countries. We have specific opportunities to look at capacity building where there is a demonstration effect or specific tool or training needed. Other institutions may be better placed to commit to this kind of country support.
4.4	Agriculture	Herders who have suffered both physical and economic displacement due to mining activities, especially in Mongolia, are hardly engaged in stakeholder consultation. Negative impact on herders is not addressed in the Strategy.	The Bank requires clients to evaluate the impact on communities and livelihoods and as a result of a proposed project and as a minimum nobody should be worse off and may indeed be better off. See ESP and PRs for requirements on social impacts.
4.4	Benefit sharing	There is no mention of benefit sharing in the Strategy.	Social assessment is covered in the ESP.
4.4	Benefits from mining	The Strategy is light on the benefits that can arise from mining, it predominantly focus on the negative impacts of mining rather than localised (~50km radii) positive impact.	Comment noted.
4.4	Capacity building	There is a lack of capacity in Mongolia, the Bank should support Public Private Partnership.	Comment noted for the Mongolia country strategy.
4.4	Child-labour	The Strategy does not explicitly mention that the Bank does not support exploitation of child labour.	The ESP commits to the ILO Convention against harmful child labour in PR2. As the ESP is a governance policy that goes over all Bank activities, it does not need to be repeated in each sectoral operations policy.
4.4	Compensation	The question of methodology used to calculate compensation for income damage on herders is raised.	The process for assessing PR5 impacts on livelihood and/or involuntary resettlement is found in PR5 of the ESP and associated guidance notes.
4.4	Compensation	There is no mention in the Strategy nor the ESP of the mechanism for determining the most vulnerable people and the calculation of compensation.	The process for assessing PR5 impacts on livelihood and/or involuntary resettlement are found in PR5 of the ESP and associated guidance notes. Stakeholder identification is in ESP PR10 and guidance notes.
4.4	Compensation	The questions of how the Bank assess if compensation is paid and how is raised.	The process for assessing PR5 impacts on livelihood and/or involuntary resettlement are found in PR5 of the ESP and associated guidance notes.
4.4	Environment	The ESIA process of mining should include a human rights assessment and the information should be publicly available.	Any project must be compliant with National Law, pertinent EU legislation and International conventions.
4.4	Gender	Gender is superficial in the ESP of the Bank and does not include harassment or decreased safety. It is suggested to improve the assessment and have a binding Gender Policy.	This comment would be more appropriately submitted for consideration in the ESP review in 2013. It will also be forwarded to the Gender Unit at EBRD.
4.4	Gender	The Strategy should make concrete commitments as to how it will improve the gender impacts of mining projects. The Bank should also either come up with a binding Gender Policy or with a Gender PR as part of	The purpose of section 4 is not to include specific commitments for gender or other issues, but rather to describe broadly how the Bank applies the 2008 ESP and associated PRs to many of the major impacts that mining can cause.

Ref.	Issue	Comment	Response
		its ESP.	
4.4	General	The Strategy should have some particular focus on capacity building, technical assistance, and the development of institutional and individual capacity to ensure long term, sustainable development after the Bank has moved to other regions or geographies.	EBRD agrees that these are important issues with respect to mining, and discusses them in section 4. However, the focus is necessarily broad, since there are many other issues that also must be addressed in the Policy, such as transparency, environmental and social appraisal, and many other topics.
4.4	Human Rights	There is no requirement for human rights impact assessment in the Strategy. There should be a specific requirement to include a human rights impact assessment for each project.	This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.4	Human Rights	Human rights should be a standalone section in the Environmental and Social Impact Assessment (ESIA) process.	This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.4	Human Rights	In the Strategy, there is no suggestion that the Bank should carry out human rights due diligence in order to identify and address human rights risks associated the extractive projects the Bank is considering to fund.	This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.4	Human Rights	It is urged that EBRD declare the right to FPIC for all directly and indirectly affected traditional peoples as a binding requirement for all mining projects. Best practice of FPIC is endorsed by other IFI but not EBRD.	The ESP requires FPIC for indigenous peoples affected by projects, including mining projects.
4.4	Human Rights	Under the section of social and environmental, the human rights of affected communities are not acknowledged. This contrasts sharply with the repeated reference to the rights of companies in relation to mining.	The Policy now explicitly acknowledges the human rights of affected communities.
4.4	Human Rights	The Bank fails to incorporate in the Strategy consideration of how the risks posed by pollution and environmental damage, which can be caused by mining projects, impact on a range of human rights, such as the rights to health, water, food and adequate standards of living.	Comment noted. In general, EBRD does not think it is necessary to rely on potential impacts on human rights to justify requiring action to avoid, reduce, or otherwise mitigate pollution and environmental damage. Many purposes are served by such requirements, not only human rights.
4.4	Human Rights	The Bank should ensure that its clients consider the risks posed by pollution to human rights and put in place systems that explicitly identify, mitigate and / or remedy any potential negative impacts on human rights.	See response above.
4.4	Indigenous People	There is no reference to the 2008 Indigenous People Policy in the Strategy.	The 2008 ESP is a governance policy that goes over all projects. The commitments in it do not need to be repeated in each sectoral policy.
4.4	Indigenous People	On p.48, it is suggested to add the following paragraph at the end of Section 4.3 of Stakeholder Engagement and Consultations - "In areas where indigenous peoples reside or are engaged in traditional livelihoods, the process of identifying indigenous communities, whose interests may be affected by a project, and information of, consultations and negotiations with, and damage/compensation calculations for such indigenous communities will be conducted in line with the Bank ESP PR7: Indigenous	The 2008 ESP is a governance policy that goes over all projects. The commitments do not need to be repeated in each sectoral policy.

Ref.	Issue	Comment	Response
		Peoples."	
4.4	Indigenous People	<p>On p.52, it is suggested to add a subsection of 'Indigenous Peoples' as Key Stakeholders before the subsection of 'Women as Key Stakeholders' with a proposed text. See Annex 2 for the proposed wording.</p> <p>Implementation of mining projects in areas where indigenous peoples reside must take into account the fact that indigenous peoples are often closely tied to their customary lands and its forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. While these lands may not be under legal ownership pursuant to national law, use of these lands, including seasonal or cyclical use, by communities of Indigenous Peoples for their livelihoods, or cultural, ceremonial, or spiritual purposes that define their identity and community, can often be substantiated and documented. It is necessary to minimise adverse effects of mining projects, including the stress impact of an inflow of migrants in areas where indigenous peoples live on traditional sources of means of subsistence or on the utilisation of lands in cultural, ceremonial, or spiritual purposes. The client will enter into good faith negotiation with the affected communities of indigenous peoples, and document their informed participation and consent as a result of the negotiation. The client will document its efforts to avoid or at least minimise the size of land used, occupied and/or owned by indigenous peoples which is proposed for the project and will offer 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; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation, where feasible. The client will give adequate time to the affected indigenous communities to come to an internal agreement, without the client imposing its will directly or indirectly, and to express their own terms and conditions of such internal agreement, including those pertaining to the interaction with a mining company and the conduct of its employees. 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 result of good faith negotiations. These negotiations shall take into consideration indigenous peoples' laws,</p>	<p>EBRD recognizes and appreciates the comment. EBRD recognizes in PR 7 of the ESP that a special approach must be taken when indigenous peoples are involved. PR7 commitments apply to all direct investment projects.</p>

Ref.	Issue	Comment	Response
		<p>traditions, customs and land tenure and involve their full participation. Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of PR 5. Indigenous peoples shall receive 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 as a result of the project without their free, prior and informed consent (PR7, items 32-35).</p>	
4.4	Involuntary displacement	The wording on involuntary displacement should be stronger.	Involuntary resettlement is dealt with in the ESP, PR 5.
4.4	Involuntary Resettlement	<p>The following is suggested to add to the Strategy on p.47 - “The involuntary resettlement may occur only when “displacement cannot be avoided” the social impact assessment is done, the Resettlement plan is consulted and communities are informed. Free, prior, and informed consent required for good faith negotiation between the client and the affected communities of indigenous peoples, documenting a mutually accepted process and evidence of agreement. From the beginning there must be full information on the project for the population, understanding of the people’s land ownership laws and knowledge of their own rights to ensure the resettlement is made as of international standards. If needed actions should be taken to provide legal assistance for the affected people. The client must conduct all premature steps so that affected population would have possible choice of resettlement sites, and have possibilities to negotiate the compensation package.”</p>	<p>The provisions of PR 6 address no net loss and net gain of biodiversity, and the Bank applies those provisions to all projects, including mining. Describing a specific methodology goes beyond the purpose of this Policy.</p>
4.4	Resettlement	<p>The World Bank Institute has a fund for displacement, a similar mechanism is not spelled out in the Strategy. The question of whether the Bank will follow the IFC compensation model and involve the community and administrative unit when quantifying compensation for livelihood and resettlement is raised.</p>	<p>Involuntary resettlement is dealt with in the ESP, PR5.</p>
4.4	Resettlement	<p>Section 4.4 is founded to be contradictory on resettlement issue. The Bank should not finance projects that require resettlement.</p>	<p>Comment noted. Involuntary resettlement is avoided wherever possible, and is only accepted if satisfactory alternative physical and economic alternatives can be arranged that meet the requirements of local law and EBRD PR 5. EBRD notes that mines are not like other industrial facilities such as power plants, which can be located in different areas; mines have to be located where the economic ore body is located.</p>

Ref.	Issue	Comment	Response
4.4	Resettlement	The Bank defines its approach to involuntary resettlement, in its PR 5 on Land Acquisition, Involuntary Resettlement, and Economic Displacement, but these policies are not wholly consistent with international human rights standards on eviction and resettlement.	This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.4	Resettlement	the Bank should make sure its mining strategy incorporates the need for full adherence to international and regional standards pertaining to the right of housing and to the requirements contained in the UN Basic Principle and Guidelines on Development Based Evictions and Displacement	This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.4	Women	The language used in the Strategy suggests that 'women are vulnerable', and presents them as helpless; the language needs to be more empowering, respectful and dignified.	Comment noted.
4.5	Health and Safety	What requirements are in place around safety equipment, personal protective equipment and other safety issues?	See PR2 in the ESP.
4.5	Health and Safety	Section 4.5 does not discuss industrial injury or disease.	See PR2 in the ESP.
4.5	Wording	Paragraph 2 (p.50) It is suggested to add: "Major challenges exists at many mining operations in the Bank's COOs due to the combination of out-dated equipment, insufficient training, and poor safety cultures.	Comments noted.
4.6	Water Management	The wording on water management is not precise.	See PR3 and 6 in the ESP.
4.6	Water Management	Water management is not simply about water purity, but there is a wider ecosystem that also needs to be considered, and so an ecosystem approach should be used.	EBRD agrees with the concept, and does consider impacts on ecosystem and any other "users" of water. This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.6	Water Management	The Strategy should directly reference the European Union Water Use Directive, following the water use hierarchy starting with drinking purposes.	Commitment to EU principles, therefore EU standards and policies are referenced in regards to water hierarchy. The revised Policy now references the Water Directive.
4.6	Water Management	It is suggested to include this in section 4.6 - 'Water use for mining must not endanger the water supply for the ecosystem, local population and the principle of precaution must be applied if the threat is there. The Bank will not be involved in mining projects if the precautionary principle is not applied to water availability for the ecosystem and population'	The Bank's ESP emphasizes the precautionary principle in assessment and decision making, and it is not necessary or appropriate to call out application of the principle to water and not to all potential biodiversity impacts.
4.6	Water Management	The following is recommended to add to the Strategy on section 4.6: - Water use for mining must not endanger the water supply for the local population and the principle of precaution must be applied if the threat is there; - Thorough comprehensive information must be provided to people about such a vital need	This sectoral Policy is not the appropriate place to include such specific requirements. The Bank's ESP emphasizes the precautionary principle in assessment and decision making. ESP The application of PRs 4 and 10 would be relevant to the issued raised in the comments, and compliance with these PRs is required of to all projects.

Ref.	Issue	Comment	Response
		as water once available and will be constantly updated; - the Bank will not be involved in mining projects if the precautionary principle is not applied to water availability for the population.	
4.7	Transparency	It lacks transparency of information over the Bank's other financial instruments (equity funds, financial institutions and Trade Facilitation Program) in the Strategy.	See sections 1.3 and 3.7.2.
4.7	Waste Management	The Strategy has to ensure no more mines are established that employ riverine tailings disposal, disposal of tailings disposal into the marine environment, or that require perpetual treatment of mine waste.	Comment noted.
4.7	Waste Management	It is suggested to add the following to p.53: "Project-by-project assessment for waste storage methods is needed to address the case-by-case environment specifics. All stakeholders should be informed and made aware of the situation."	This is the approach taken by EBRD. The text will be modified to further emphasize the project-by-project assessment that EBRD uses.
4.7	Wording	In section 4.7, it is suggested to add to the Bank approach: "Ensure that design , construction and maintenance of the waste rock facilities and tailings facilities promote safe operation and do not pose significant risks to human health or the environment. For the countries occupied small territories possibilities of recycling will be prior requirements."	Comment noted. These are issues that are evaluated by the Bank for all projects where they may present risks.
4.8	Artisanal mining	The discussion of artisanal mining could be amended to expand access to mining rights, the capacity transfer of environmental, health and safety management to contribute to the improvement of artisanal mining.	EBRD does not finance artisanal mining. However, EBRD will take the comment on board for further discussion.
4.8	Cyanide	The Bank should give a firm position in the Strategy that cyanide is not used in the whole lifecycle of mining, including activities in both extractive countries and other countries in the downstream process.	EBRD believes that cyanide can be used safely if managed properly. The Bank requires all its client companies to manage cyanide in a way at least equivalent to the international cyanide management code and in accordance with EU and national requirements.
4.8	Cyanide	The use of cyanide should not be considered only from an economic perspective, but also from the social and environmental perspective.	The Bank does not consider cyanide from only an economic perspective. Rather, potential environmental and social impacts from the use of cyanide, including potential accidents, are considered in due diligence.
4.8	Cyanide	The Strategy does not outlaw use or provide direction towards phase out of use of cyanide.	See response above.
4.8	Cyanide	The Bank should have stricter requirement on cyanide management than outlined in the Strategy. The Bank should require clients to commit to the International Cyanide Management Code (ICMI) certification during the life of the loan.	EBRD notes the comment, and has stated that it will require a system equivalent to ICMI certification, which would be equally effective in controlling risks from cyanide mismanagement. EBRD notes the scarcity of auditors and service/cyanide suppliers and transporters in our countries of operation.
4.8	Material management	The questions of whether the Bank is considering the ban of use of certain risky or harmful technologies in mining is raised.	EBRD reviews each proposal individually. The ESP commits the Bank to recognize those restrictions in force by the EU and by individual countries.

Ref.	Issue	Comment	Response
4.9	Biodiversity	The Strategy notes that it will identify potential risks to biodiversity, but it is not clear how the Bank is going to carry this out.	This is generally accomplished during due diligence, including in ESIA's and associated studies. The methods vary depending on the potential impacts, the nature of the operation, the locations, and other site-specific variables, so it is not possible to describe a single approach.
4.9	Biodiversity	Large scale of habitats and species research works have been carried out in South Gobi Desert District. It is strongly suggested that despite the planned Biodiversity Survey in the Gobi Region with regard to the Bank's natural resources projects, it would be better to use the existing scientific literature data and put more efforts on practical issues of quarries rehabilitation and remediation works based on best international practice.	Comment noted. The Bank emphasizes that it works to ensure that projects use the best data sets available.
4.9	Biodiversity	The Bank's approach to biodiversity is not specific to mining on p.56.	The ESP requirements go across all sectors.
4.9	Biodiversity	It is not clear how the PR 6 is linked to the Strategy.	See section 4.9.
4.9	Biodiversity Offset	The effectiveness of biodiversity offset is questioned.	The need to evaluate offset effectiveness is not questioned, but rather the question is where is the best place to determine how best to do that evaluation. This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.9	Biodiversity Offset	Wording relating to biodiversity is weaker within the Strategy than in the Bank's PR 6, especially in impacts avoided, mitigated or otherwise managed. There is no clarity around the Banks position on offsetting.	The provisions of PR 6 are clear regarding biodiversity and impacts avoided, mitigated, or otherwise managed. Those provisions are applied to the unique circumstances that are encountered at each mining site.
4.9	Biodiversity Offset	Some international/national standard on biodiversity offset is expected to be published. The Bank should refer to them in quantifying residual impacts.	The Bank applies the mitigation hierarchy as provided in PR 6.
4.9	Biodiversity Offset	Methodological context of biodiversity offsets taking into consideration principles of no net loss and net gain of biodiversity should be explicitly clarified.	The provisions of PR 6 address no net loss and net gain of biodiversity, and the Bank applies those provisions too all projects, including mining. Describing a specific methodology goes beyond the purpose of this Policy.
4.9	Environment	Section 4 does not fully cover disturbed lands and suggest provision for reclamation in advance.	The purpose of section 4 is not to include provisions for reclamation, but rather to describe broadly how the Bank applies the 2008 ESP and associated PRs to many of the major impacts that mining can cause.
4.9	Financial evaluation	The question of whether the methodology of ecosystem services is being used by the Bank currently is asked.	Current PRs do not explicitly contain focus areas for ecosystem services, but these are part of the definition of critical habitats, and thus are considered.
4.9	Financial evaluation	The Bank should be clearer about the use of cost benefit analysis in the Strategy. Ecosystem Services, such as that defined by The Economics of Ecosystems and biodiversity, is one possible methodology to use.	This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.9	Financial evaluation	The Bank should include a methodology which puts a monetary value on environmental damage and this links in to including the concept of ecosystem services.	The Bank does not view impact during operation in monetary terms, rather it applies the mitigation hierarchy of avoid, minimise, mitigate and offset.

Ref.	Issue	Comment	Response
4.9	Habitat Directive	With regards to habitats directive, it is important to link projects more clearly to the result desired.	Comment noted.
4.9	No-go Zone	The issue of no-go Zone is not adequately addressed in the Strategy. The Bank should define the no-go zones clearly.  The Bank should include glaciers as well as natural protected areas as no-go zones.  Protected areas and high value ecosystems should be endorsed by the Bank as no-go zones.	The ESP has strict requirements for working in critical habitat and protected areas. Further, the ESP requires compliance with national legislation and therefore, if working in a certain area is prohibited by national legislation, this would also be prohibited by our ESP. This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.9	No-go Zone	It suggests that the Bank specifies in which areas projects will not be funded in any case, suggest include: a) Arctic; b) World Heritage Areas (and ensuring mining does not impact on World Heritage values); c) IUCN Category I-IV Protected Areas, IUCN I-VI Marine Protected Areas and Vulnerable Marine Areas (unless binding arrangements are made that demonstrably improve the adequacy of the protected areas network).	The ESP has strict requirements for working in critical habitat and protected areas. Further, the ESP requires compliance with national legislation and therefore, if working in a certain area is prohibited by national legislation, this would also be prohibited by our ESP. This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.9	Offset fund	The Bank should consider sustainable or biodiversity offset fund to be co-financed with government or industry to mitigate impact rather than an one-time investment.	This comment would be more appropriately submitted for consideration in the ESP review in 2013.
4.9	Protected area	The Strategy should consider not just the protected areas but also areas bordering to the protected areas.	Comment noted. This issue is considered on a project by project basis.
4.9	Wording	Should avoid using the word 'endemic' in the context of deserts, technical terms should be used instead.	Comment noted.
4.9	Wording	On-site nurseries do not work in countries of transition, the term 'on-site' should be taken out.	Comment noted.
4.9	Wording	Wording on Nature Conservation is not strong enough.	Comment noted.
4.10	Mine closure	the Bank should consider creating a democratically controlled reserve fund for managing the transition and benefits sharing.	Comment noted.
4.10	Mine closure	It is suggested to add the following to section 4.10 - "The closure plan should guarantee a reclamation plan is developed with full financial guarantees to ensure that the plan is implemented at the cost of the operating company. The mine reclamation plan must be publicly reviewed at least every five years to ensure that the plan and reclamation funds are adequate and sufficiently secure to protect the ecosystem and local people. The mining company must plan every stage of the mine's life-cycle and all the risks should be properly constantly communicated and presented to public. The mining company must include social, ecosystem and biodiversity aspects in the closure plans, and continue with	The Bank considers that goals should be site-specific.

Ref.	Issue	Comment	Response
		transparent reporting of closure planning and related financial provisioning. The company should bear all responsibility and risks to ensure that all mining impacts are fully reclaimed."	
4.10	Mine closure	It is suggested that closure and decommissioning costs, including the cost of developing other business opportunities and re-education of the mining sector workers, should be reflected in the cost benefit analyses of the project.	Closure and decommissioning costs are considered as part of project appraisal. EBRD has guidance notes on retrenchment planning, including re-skilling of workers.
4.10	Monitoring and evaluation	It is not clear if the Bank requires action plan that include monitoring and commitment of funding through the life of mine and beyond closure.	EBRD PR1 requires development of an Environmental and Social Action Plan, and plans generally require site-specific monitoring and reporting throughout the term of the financing agreement. The ESAP is included as part of the legal agreement between EBRD and the client.
4.10	Post-closure rehabilitation	There needs to be stronger wording around post-closure rehabilitation.	Comment noted.
4.10	Post-closure rehabilitation	There is no clear guideline for closure and rehabilitation in the Strategy.	Decisions regarding closure and rehabilitation are best made at the project level. As noted in the Policy, the EU Mine Waste Directive and international best practises are applied to projects financed by the Bank.
4.10	Post-closure rehabilitation	The Strategy should outline the requirements for companies on long term management of post-closure rehabilitation.	The overall goals of rehabilitation, post-mining land use, rehabilitation techniques, post-closure monitoring, and other related aspects of post-closure rehabilitation are necessarily addressed on a site-specific basis, guided by national law, the EU Mine Waste Directive, and international best practise.
4.10	Post-closure rehabilitation	The Bank should consider managing post-closure rehabilitation with insurance to cover the cost of potential post-closure issues.	The Bank does not specify any single financial assurance mechanism for post-closure rehabilitation. If available, insurance would certainly be one such mechanism.
4.10	Post-closure rehabilitation	The Strategy should clearly underlined the procedure on residual unavoidable impacts and subsequent activities as the client either has to offset the biodiversity loss according to no net loss and net gain principles or have to prepare the relevant rehabilitation or reinstatement plan that includes bio restoration specifications as well and ensure their implementation according to best international practice.	These issues are addressed for each project, guided by PR 6. Individual projects and sites are so variable that a single procedure or specific bio-restoration specifications would be unnecessarily rigid and could limit the Bank's and the company's flexibility in seeking the most desirable and feasible outcome that is consistent with the PR.
4.10	Reuse of closed mines	The Bank should address the issue of reuse of closed or dormant mines.	Post-mining land use is best decided based on site-specific conditions, including the wishes of key stakeholders, including the local community, and not in a sector Policy.
4.11	Conflict Materials	The Strategy does not incorporate the due diligence requirement of conflict materials, e.g. Dodd-Frank Act on conflict materials <sup>16</sup> .	The Bank's environmental and social due diligence requirements are incorporated in the ESP, and due diligence on a particular project would highlight relevant issues.
A2.1.3	Capacity building	The Bank's mining strategy should include that the Bank brings know-how, skill transfer, technology and also help on financial structuring for medium and larger scale	This is presented in sections 3.1 and 3.2.

<sup>16</sup> Available at <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>.

Ref.	Issue	Comment	Response
		projects by the local miners in the country.	
A2. 2.3	Capacity building	It is mentioned in the Strategy that 'Efforts should be made to strengthen capacity building of regulatory authorities, but also to favour 'bottom-up' monitoring through the involvement and empowerment of affected communities', however, it is unclear how that will be achieved.	Sections 4.3 and 4.4 detail how the Bank will engage with local stakeholders including by involving them in the project monitoring.
A3	Inaccurate information	In Annex 3: The following sentence is inaccurate: "There are sub-national dimensions relevant to EITI, particularly in ensuring that local communities see the flow of taxes back to them."	This wording has been amended in the Policy.
A4	Inaccurate information	Some inaccuracies are found in the Strategy, including: i) Mining education is cited as being weak but this is not the case in the Kyrgyz Republic. ii) Annex 4 states that there are 11 EITI Compliant countries and 22 EITI Candidate countries. This is outdated information as currently there are 14 EITI Compliant countries and 21 EITI Candidate countries.	i) The wording in the revised Policy has been amended in response to the comment. ii) this has been corrected in the revised Policy.

## ANNEX : LIST OF STAKEHOLDERS CONTRIBUTING COMMENTS

### A1. Participation in public and individual meetings

Organisation	Type
A local community network (Canada)	CSO
Adam Smith International	Other
Altai Khundai	Company
Anglo American PLC	Company
Association of Young Environmental Lawyers and Economists	CSO
Building and Wordworkers International	CSO
Bulgarian Chamber of Mining and Geology	Industry association
Center for Energy, Ecology, Economy	CSO
Center for Environmental Legal Studies, Pace University School of Law	Academia
Center for Introduction of New Environmentally Safe Technologies	CSO
Centerra Gold Inc	Company
Centre for Environmental Information and Education Tsanko (CEE Bankwatch Network)	CSO
Centre for Policy Research	CSO
Denkstatt	Other
Deutsche Gesellschaft für Internationale Zusammenarbeit - Integrated Mineral Resource Initiative (GIZ-IMRI)	IFI
Dundee Precious Metals Inc	Company
Ecolife	CSO
Ecoline	CSO
EcoLur	CSO
Environment-People-law	CSO
EITI Secretariat	Other
Fairlinks	Other
Fauna & Flora International	CSO
For the Earth - Za Zemiata (CEE Bankwatch Network)	CSO
Foundation Caucasus Environment	CSO
Freeport-McMoRan Copper and Gold Inc	Company
Georgian Society of Nature Explorers (Orchis)	CSO
Green Policy Institute	CSO
Greenpeace Russia	CSO
HDC "Tree of life"	CSO
Higer School of Economics, National Research University	Academia
InEcA Consulting	Other
Inspire, Hovik, Norway	Other
International Council on Mining and Metals	Industry association
International Cyanide Management Institute	Industry association
IFC	IFI
Kinross Gold Corp	Company
London Mining Network	CSO

MAK	Company
Minerals Regulation Authority of Mongolia	Government
Mining Executive Search	CSO
Ministry of Energy and Natural Resources of Georgia	Government
Monfemnet National Network	CSO
Mongolian Environmental Civil Council	CSO
Mongolian Nature Protection Civil Movement Coalition CSO - Arium Suraga Civil Movement	CSO
Mongolian Women's Centre for Environment & Development	CSO
Open Oil	CSO
Pact Mongolia	CSO
Parsons Brinckerhoff Ltd	Other
Peabody Energy Corp	Company
Polish Green Network (CEE Bankwatch Network)	CSO
Public Association 'Blago'	CSO
Public Policy Research Centre (CEE Bankwatch Network)	CSO
Regional Center for Central and Eastern Europe	CSO
Regional Environmental Centre for Central and Eastern Europe	CSO
Resource Consulting Services Ltd	Other
Revenue Watch Institute	CSO
Rio Tinto plc	Company
Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON)	CSO
Russian Regional Environmental Centre	CSO
Swiss Agency for Development and Cooperation	IFI
The International Center for the Advancement of Pastoral Systems	CSO
The Nature Conservancy	CSO
Titan Cement Company S.A.	Company
Toronto Stock Exchange	Other
Transparent World	CSO
UK Trade and Investment	Government
United Nations Development Programme	IFI
University of Science and Technology	Academia
Wild Salmon Center	CSO
Wildlife Conservation Society	CSO
Women 21st Centre	CSO
Women for Social Progress Movement	CSO
World Bank	IFI
World Bank Institute	IFI
World Gold Council	Industry association
WWF Mongolia	CSO
WWF Russia	CSO

**A2. Participation with written contributions**

<b>Organisation</b>	<b>Type</b>
Adam Smith International	Other
Amnesty International	CSO
Both ENDS	CSO
Bureau on Human Rights and Rule of Law	CSO
EcoLur	CSO
EITI Secretariat	Other
Foundation Caucasus Environment	CSO
Georgian Society of Nature Explorers (Orchis)	CSO
Hambledon Mining Plc	Company
HDC "Tree of life"	CSO
Icons of Europe	CSO
IFC	IFI
London Mining Network	CSO
National Ecological Centre of Ukraine (CEE Bankwatch Network)	CSO
Public Association 'Blago'	CSO
Revenue Watch Institute	CSO
Rio Tinto plc	Company
Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON)	CSO
Society for Threatened People	CSO
WWF Russia	CSO
WWF Switzerland	CSO