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To: Secretary General
European Investment Bank
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Subject: Complaint on Rivne - Kyiv High Voltage Line Project seeking project compliance review

Dear Sir/Madame,

I am writing in regards to the Rivne - Kyiv high voltage line project¹ signed by the EIB 24 October 2008 and ratified by the Ukrainian Parliament 1 April 2009.

In its 2004 Environmental Statement effective at the time of project appraisal and approval, the EIB indicates that all projects it finances comply with the EU's Directive on environmental impact assessments². According to the Environmental Impact Assessment Directive (85/337/EEC)³, the Rivne - Kyiv high voltage line project falls under Annex I meaning that an EIA is mandatory. A copy of the environmental and social impact assessment⁴ was published by the project sponsor and on the EIB web site where it is still accessible (except detailed maps of the project sites).

Section 2.2 of the ESIA defines the scope of the loan application and study boundaries as⁵:

- *The 750 kV Rivne NPP – Kyiv transmission line, of total length 353km.*
 - *The 135km long diversion of 750 kV transmission line Khmelnytsk NPP – Chernobyl to Kyiv substation.*
- Additional projects will be undertaken to achieve the project objectives, but are outside the scope of this ESIA:*
- *The modernization of the 750 kV Kyiv substation, which requires upgrading works in order to be able to accommodate the new transmission line*
 - *Three maintenance stations to be built along the proposed transmission line route"*

¹ <http://www.eib.org/projects/pipeline/2006/20060447.htm>

² EIB – Environmental Statement 2004 (p. 1). Document is available upon request.

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0337:20090625:EN:PDF>

⁴ "The ESIA report has been prepared for meeting environmental requirements of the European Bank for Reconstruction and Development (EBRD) and European Investment Bank (EIB) that are considering the opportunity to finance the Project. The ESIA report is the main document with the help of which the EBRD and EIB will implement environmental assessment of the Project" – page 1 of the report.
http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

⁵ ESIA report, page 28. http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

However, the loan agreement between the EIB and Ukraine includes other significant project components that were neither assessed for their environmental impact nor publicly consulted. According to the technical description in Annex A of the loan agreement between Ukraine and the EIB⁶ the project includes two more parts: two 60-km long 330 kV lines from the 750/330 kV substation Kyivska (connecting 330 kV overhead transmission line Chornobyl NPP – Severna to 330 kV power distribution unit at substation Kyivska) and upgrade and modernising of 750/330 kV substation Kyivska by installing the second 750/330 kV auto transformer.

Thus two significant parts of the project i.e. the third and fourth points⁷ were not subject to EIA prior to project approval and signing of the finance contract.

1. Allegation concerning the EIB project cycle

The 2004 Environmental Statement states that: *“All projects that have a significant effect on the environment require an EIA, including public consultation, according to Directive 85/337/EEC, amended by Directive 97/11/EC.”*⁸ Yet the project to construct two 60-kilometres, 330 kV lines was not subject to an EIA.

In our letter to the EIB on 6 October, 2011 we informed the bank about deficiencies in the ESIA for this project implemented by NEK “Ukrenergo” (see Annex 1). In its response of 10 October, 2011, the EIB said that the finalisation and submission of the EIA for the substation extension and as well the 330 kV connection lines were a condition for disbursement (see Annex 2).

However the EIB did not inform us about when the missing EIA was planned and what the project promoter’s plans were in regards to public consultations. We are still unaware about whether the project promoter has undertaken any actions in Ukraine to finalise the EIA for the remaining parts of the project. However we are aware that on June 7, 2012 the EBRD published a procurement note for the 750 kV Rivne-Kyiv High Voltage Line Construction⁹ including the construction of the part of the project for which the EIA is missing.

The EIB’s Environmental and Social Practices Handbook from September 2007 includes requirements for the project website publication and the project cycle. The handbook requires a “30-days rule” for all its investment loan projects outside the EU, in candidate and potential candidate countries: *“To the extent possible, the Non-Technical Summary (NTS) for all Investment Loan Projects (excluding multi scheme projects (programmes)) (...) requiring an EIA, will be made publicly available at a minimum of 30 days before the project is presented to the Board.”*

In our view the EIB has violated the “30-days rule” by not making publicly available the required and finalised EIA for the whole project at least 30 days before the project was presented to the board, nor has a justification to waive the rule been made publicly available. The EIB has also still not made available the required final EIA even after the finance contract was signed on 20 October 2008.

While the EIB has said that the finalisation and submission by the project sponsor of the EIAs for the above substation extension and 330 kV connection lines are a condition for disbursement, we do not believe this constitutes a sufficient explanation for waiving the “30 days rule”. The intention of the handbook was to differentiate EIB’s practices in regards to project website publication and project cycle for projects located within and outside of the EU and candidate countries.

The handbook further explains the EIB’s approach to the project cycle for investments outside of the EU (page 25): *If the project will be presented to the Board under written procedures, the 30-day rule should count back from the cut-off date for Board approval. It should be noted that the EIB project cycle differs in some detailed respects from that of other MFIs, such as EBRD, in that loan negotiation and the subsequent signature take normally place after approval by the Board of Directors. This allows for public consultation either side of Board discussions and explains the different pre-Board consultation periods applied by the different MFIs (generally 30 days for EIB cf. 60-120 days for other MFIs). Obviously, any significant change in project design (e.g. as a result of enhanced mitigation) must be agreed by an appropriate level of the Bank’s decision making bodies, and disbursement should not take place until the Bank is satisfied with the content of the EIS and the form of the EIA, where required.* (Emphasis added)

We believe the EIB did not comply with its own standards when allowing for the loan to be signed without finalising the EIA and conducting public consultations. As far as it is impossible (as per the Handbook) to apply the “30 days

⁶ http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=971_002

⁷ The estimated in 2007 cost of Part D was Euro 25 million, out of Euro 300 million total EBRD+EIB project cost.

⁸ EIB – Environmental Statement 2004 (p. 4). Document is available upon request.

⁹ <http://www.ebrd.com/english/pages/workingwithus/procurement/notices/project/120607b.shtml>

rule,” the EIB may allow public consultations to continue after loan approval by the Board of Directors while “loan negotiation and the subsequent signature” are ongoing. Yet the EIB had negotiated the loan and signed the finance contract without ensuring that the EIA and public consultation had been finalised. This constitutes a violation of the EIB’s procedures in the Handbook.

The EIB limits itself to incorporating in the finance contract a standard provision in regards to EIA and public consultations, a provision which might be acceptable if the project is located in the EU. However it is clearly not enough (and not in line with the EIB’s own procedures) for projects outside of the EU, candidate and potential candidate countries like Ukraine. Moreover the EIB has demonstrated the lack of knowledge about the plans of the project promoter regarding the finalisation of the EIA and public consultation.

2. Allegation concerning access to environmental information

According to the EIB project description available online, the promoter was preparing an EIA in line with EU requirements including on public consultation, and progress on the EIA and the assessment of social impacts were to be reviewed during project appraisal.

While the loan agreement was signed 24 October 2008, the project description has not been updated after appraisal was completed, the limited public consultation concluded and the ESIA finalised. The project description therefore presents misleading and false information about the project status and the EIA process. The project description also provided false information, as the project promoter was not preparing a project EIA in line with EU requirements but rather only for part of the project. This information was omitted in the project description. Moreover the project description has never been updated and still provides information from the pre-appraisal stage even though there have been important developments in the project preparation, including the completion of the EIB’s environmental appraisal, project signing and the completion of the ESIA and the public consultation for part of the project.

In our view the EIB has violated Article 4 point 2 and Article 5 point 1 of the *Regulation No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation on Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies*, as the bank did not ensure that up-to-date, accurate environmental information was made available by the bank.

The project is also currently placed in the section “project financed,” while in reality the bank has not financed the project e.g. such categorisation suggests that the loan has been disbursed. The updated information on the project stage (approved, signed or disbursed) is important environmental information on which the EIB conditions the subsequent project stages, and in the case of the Rivne - Kyiv high voltage line project, the disbursement of the loan and finalisation of the EIA and public consultations. The information about the state of the project on the EIB webpage is thus inaccurate.

According to the procedures detailed in the Handbook, the EIB produced a number of documents containing environmental information regarding the Rivne - Kyiv project, including the Environmental Appraisal Report, Environmental Assessment Forms (D1/D2), Finance Contract and Value Added Sheet. These documents or the environmental information they contain have never been disclosed by the EIB on its website.

The EIB does not provide online access to any of the documents compiled for the project that contain environmental information. This means the EIB has violated Article 4 point 1 of the above Regulation 1367/2006 which says that “community institutions and bodies shall organise the environmental information which is relevant to their functions and which is held by them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication (...) in accordance with Articles 11(1) and (2) and 12 of Regulation (EC) No 1049/2001 (...)”

The EIB failed to comply with these provisions which it is obliged to as an EU institution.

We seek a compliance review of the Rivne - Kyiv project, we look forward to a proper investigation into this deviation from the EIB’s policies and EU legislation on access to environmental information. In particular we ask the EIB to:

- End the practice of signing finance contracts for projects outside of the EU, candidate and potential candidate countries for which an EIA and public consultations are not finalised i.e. respect its “30 days rule”.

- Update project information for the Rivne - Kyiv high voltage line project on its webpage with a view to provide accurate information about the project stage, its environmental impacts and in particular provide detailed information regarding public consultations for the remaining parts of the project.
- Provide online access through the EIB website to environmental information contained in project documentation regarding the Rivne - Kyiv high voltage line project.

Sincerely yours,



National Ecological Center of Ukraine