



Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

Rivne-Kyiv High Voltage Line Project Ukraine

Complaint SG/E/2012/o8

CONCLUSIONS REPORT

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EIB Complaints Mechanism

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The EIB Complaints Mechanism

The EIB Complaints Mechanism intends to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases whereby the public feels that the EIB Group did something wrong, i.e. if they consider that the EIB committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) - and one external – the European Ombudsman (EO).

Complainants that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of the receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB with the European Ombudsman.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism intends to not only address non-compliance by the EIB to its policies and procedures but to endeavour to solve the problem(s) raised by Complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/cr/governance/complaints/index.htm>

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CONCLUSIONS REPORT

EXECUTIVE SUMMARY

On 5 July 2012 National Ecological Center of Ukraine, ("The Complainant") lodged a complaint to the European Investment Bank (EIB) concerning the Rivne-Kyiv High Voltage Transmission Line Project ("the Project"). The Bank approved a EUR 150 million loan to finance the Project in July 2007, and the Finance Contract was signed with the Ukraine Government in October 2008. The Complaint includes two main allegations: (i) the failure of the EIB to comply with its own Project Cycle for projects located outside the EU, and (ii) the failure of the Bank to provide reliable and updated access to environmental information. Regarding (i), the Complainant alleges that the Bank approved and signed the project without completing the ESIs for all the components of the project and therefore did not respect the 30-day rule for publication of environmental information before Board decision as outlined in the Bank's Project Cycle. Regarding (ii), the Complaint follows prior communications between the Complainant and the Bank, where the Complainant requested information on environmental documents of the Project. The Complainant had also lodged a formal complaint against the EBRD, the only co-financier of the Project, in January 2012.

The Project is structured as a Multi-Scheme project consisting of the design, the construction and the operation of a transmission system that will strengthen the high-voltage transmission connection between Western and Central Ukraine, and in the medium term will enable connections to the Trans-European Energy Networks (TEN-E). Implementation of the project is divided into 4 separate lots or components. Before the Project was presented to the EIB Board, the promoter had completed the Environmental and Social Impact Assessments for only two of these components. Given the different stages of preparation of each component, the EIB services had proposed to establish the completion of the pending ESIs as a Condition Precedent for disbursement of the financing for the said components.

The Complaints Mechanism of the EIB (EIB-CM) contacted the EIB services concerned to find out details about the Project and previous communications with the Complainant. The EIB-CM also carried out a desk review of the key documents related to the Project and to the Complaint. After reviewing the information available, the EIB-CM noted that the Bank's internal rules for Environmental procedures – concerning the 30 day rule publication – distinguish between Stand-Alone Investment Loans and Multi-Scheme projects. While the EIB's Board can only take a decision on a Stand-Alone project located outside the EU 30 days after a Non-Technical Summary of the project have been published externally, including environmental-related matters, this rule does not apply to Multi-Scheme projects such as the one under consideration. From the Bank's management perspective, Multi-Scheme projects include several components interrelated that can be implemented at different timeframes, and therefore the status of the project preparation of each component is also different. This differentiation allows the Bank to sign the Finance Contract and continue with the preparation of the ESIs. The completion of these ESIs - in accordance with EU Directives - can then be established as a condition precedent for disbursement.

It can therefore be concluded that the proposal has been processed in accordance with the Bank's policies that regulate Multi-Scheme Projects and that therefore there is no infringement of the EIB's Project Cycle.

Concerning the second allegation - the failure of the Bank to provide reliable and updated access to environmental information – the EIB published the Non-Technical Summary (NTS) of the Project, including the ESIA available at the time, on its website in June 2007. The content of the NTS was updated in February 2012, following an initial query from the Complainant. The Bank also sent the environmental section of the Bank's appraisal report to the Complainant in June 2012. The Bank has therefore provided environmental information in accordance to the policies in force at each relevant time. However, and in the case under consideration, it is recommended that the Bank updates the information related to Environmental Matters to its current Project Status. In the future, it would be advisable to extend this recommendation to other projects requiring long preparation periods, as some comments can mislead the external reader if unduly kept.

Overall, the EIB-CM has concluded that there is no maladministration of the EIB in respect of the allegations of the Complainant.

CONCLUSIONS REPORT

Rivne – Kyiv High Voltage Transmission Line Project

Complainants: National Ecological Centre of Ukraine (hereinafter called "the Complainant"), a member of the CEE Bankwatch network, IUCN and Global Releaf

Date received: 05.07.2012

Project Status: Signed and no disbursed

Board Report: 17.07.2007

Contract amount: up to EUR 150 M

1. SUMMARY OF ALLEGATIONS

Failure to comply with the EIB project cycle:

The Complainant alleges that "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". The allegation is based on the fact that at the time of Board discussion and approval, the ESIA was completed for 2 out of 4 project components identified in the Bank's Project Description. According to the Complainant, the Bank has violated the 30-days rule established in the Environmental and Social Practices Handbook (version of September 2007) by not making publicly available the required and final ESIAs for the whole project at least 30 days before the Board discussion. In addition, though the finalisation and submission by the project sponsor of the EIAs of the remaining project components was established as a Condition Precedent (CP) for disbursement, the Complainant does not believe that this constitutes an explanation to waive the 30- days rule because "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".

Besides the Complainant alleges that the EIB allow public consultations to continue after loan approval by the Board of Directors while "loan negotiation and the subsequent signature" are on-going. Yet the EIB had negotiated the loan terms and signed the finance contract without ensuring that the EIA and public consultation had been finalised, which would constitute a violation of the procedures laid down in the Handbook.

Failure to provide reliable and updated access to environmental information:

The Complainant alleges that the Bank has violated Article 4.2 and article 5.1 of the Regulation No 1367/2006 of the European Parliament and the Council of 6 September 2006 on the application of the provisions of 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 Complainant also alleged that the Bank provided false information because the project EIA was not being prepared in line with EU requirements and that the information in the Bank website is misleading as the project is under the sections "projects financed" but the Bank is yet to disburse the funds of the project. The Complainant also alleges that the Bank has demonstrated lack of knowledge about the plans of the project promoter to finalise the EIA and public consultation.

Finally, the Bank should have made available online, in line with the Aarhus Convention, several documents related to the environmental impact of the project.

2. CLAIM

The Complainant requests:

- End the practice of signing finance contracts outside of the EU, candidate and potential candidate countries for which 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 voltage line project

3. THE PROJECT: RIVNE – KYIV HIGH VOLTAGE TRANSMISSION LINE

- 3.1 The project consists of the design, construction and operation of (i) a 350 km, 750 kV electricity transmission line between the Rivne and Kiev substations; (ii) a 135 km, 750 kV line connecting the Khmelnytsk-Chernobyl line to the Kiev substation; (iii) two 60 km, 330 kV transmission lines; (iv) and several smaller transmission investments related to the 750/330 kV substation of Kiev. The project will strengthen the high-voltage transmission connection from the Kiev area to western Ukraine, enabling connections in the medium term to the Trans-European Energy Networks (TEN-E).
- 3.2 The State of Ukraine is the borrower of this operation and Ukrenergo - the State Enterprise National Power Company - is the promoter and implementing agency. Ukrenergo is the transmission system operator of Ukraine; owning and operating the 220kV-750kV AC and 800 kV DC networks of the country.
- 3.3 According to the Bank's Board report, Ukrenergo will award the EPC contracts for the transmission line sections and the main substation equipment through international calls for tenders, using restricted procedures consistent with the Bank's Procurement Guide. EBRD is providing Technical Assistance to Ukrenergo for the procurement of works contracts. The Procurement process has been completed for the project components related to the afore-mentioned 3.1 (i) and 3.2 (ii) and is currently on-going and is expected to be finalised in 2013 for the project components related to the afore-mentioned 3.1 (iii) and 3.1 (iv).
- 3.4 According to the EIB's Board Report, the Promoter has provided an EIA study for the 750 kV transmission works (the 350 km and 135 km lines), in line with EU requirements, including public consultation, with the technical assistance from EBRD. The EIA also covers the social impacts related to these works and constitutes an Environmental and Social Impact Assessment (ESIA). The studies were published on the EIB website on 8 June 2007.
- 3.5 The EIAs of the project components that are related to the afore-mentioned 3.1 (iii) and 3.1 (iv) had not been undertaken at the time of the Board discussion. Following the recommendation of the Bank's services, the EIB's Board stipulated that these ESIA's will have to be prepared in line with EU requirements, including public consultation, as a Condition Precedent for each first loan disbursement for each component.

- 3.6 The total project costs were estimated at EUR 300 million at the time of appraisal and financing was to be mobilised on 50/50 basis from the European Bank of Reconstruction and Development (EBRD) and the EIB. The EIB's Board of Directors approved the project on 17 July 2007, while the official opinion of the European Commission, in favour of the project, was issued on 23th February 2007. The EIB signed the Finance Contract in October 2008, and it was ratified by the Ukrainian Parliament on 1st April 2009. Funds have not been disbursed and the availability date for disbursements, initially established for 36 months after signature, has been extended to 31 December 2012. In an email dated 24 September 2012, the Bank's services informed the EIB-CM that the first disbursement for components (i) and (ii) is expected to take place in December 2012 and that the first disbursement for components (iii) and (iv) will not take place before June 2013.

4. BACKGROUND OF THE COMPLAINT AND METHODOLOGICAL ASSESSMENT

4.1 Background

- 4.1.1 Before lodging the formal complaint on 5 July 2012, the Complainant had already sent a letter on 6 October 2011 drawing the attention of the Bank that the non-completion of the ESIA's before the Board approval constitutes a serious violation of the Bank's Environmental rules and requested the Bank to ask the promoter to take the appropriate measures. The Complainant also enquired whether the Bank had obliged the borrower to conduct EIAs for all the components of the project and if any disbursement had been made. On 10 of October 2011 the Bank's services confirmed to the Complainant via email that the contractual relationship between the borrower and the Bank stipulated that the completion of the ESIA's for the substation as well as the connection 330 kV lines was a Condition Precedent for the first disbursement related to these components of the project. The Bank also informed that no disbursement had been made for the loan. In addition, and following a request of the Complainant received on 22 June 2012, the Bank sent a copy of the environmental section of the appraisal report prepared by the Bank's Projects Directorate on 27 June 2012. Eight (8) days later the Complainant reacted by lodging a formal complaint.
- 4.1.2 On 10 January 2012 the Complainant had also lodged a formal complaint to the EBRD's Project Complaint Mechanism. The Complainant alleged that the EBRD had violated the 2003 Environmental Policy of EBRD because the project had been approved by the Board with uncompleted ESIA's - including the absence of public consultation - and because of discrepancies between the Project as it had been presented to the Board and how it had been described in the Loan Agreement, signed by the parties. The Complainant also made allegations concerning the poor preparation and implementation of the project as well as the financial harm to Ukrainian tax payers as the Government is paying financial charges for a facility that has not been disbursed/implemented. The complaint to the EBRD followed several interactions with their services that had started in May 2010.

4.2 Methodological Assessment

- 4.2.1 On 23 July 2012, the EIB Complaints Mechanism (EIB-CM) acknowledged receipt of the Complainants' letter, and informed the Complainant that the EIB-CM was carrying out a review of the complaint, indicating the date by which the complainant may expect an official reply from the EIB. Due to the complexity of the inquiry and in line with article 11.10.02 of the EIB Complaints Mechanism Policy the communication already incorporated the extended maximum deadline for reply.
- 4.2.2 The EIB-CM then reviewed the relevant documents of the project, including the exchange of correspondences with the Complainant, the Bank's Board Report, the Finance Contract, the Bank's Statement on Environmental and Social Standards and Environmental and Social Handbook, the Bank's Operational Manuals and other internal documents. Meetings took place with the services responsible for the project appraisal and monitoring to understand the background of the project, the status of the implementation of the project and to exchange views on the issues raised by the complaint. The meetings were followed by an exchange of emails to clarify further points.

4.2.3 The EIB-CM also contacted the EBRD's Project Complaint Mechanism to find out the status of the complaint lodged against the EBRD and the actions taken. The EIB-CM received a copy of the EBRD-PCM's Eligibility Assessment Report on the 12th November 2012. According to this report, the EBRD-PCM's Eligibility Assessors find the Complaint Eligible for a Compliance Review because there are two eligible grounds of alleged non-compliance with the [EBRD] 2003 Environmental Policy, which are to be examined in a Compliance Review:

a. The alleged failure of the Bank [EBRD] to ensure that a comprehensive, and therefore adequate, Environmental Impact Assessment had been carried out in respect of the Project, including consideration of Parts C and D¹; and

b. the alleged failure of the Bank [EBRD] to ensure disclosure and meaningful public consultation in respect of Parts C and D.

4.2.4 The information collected by EIB-CM was considered sufficient to form an opinion on the key allegations presented by the Complainant and assess whether maladministration by the EIB had occurred. The key findings and conclusions are presented below.

5. FINDINGS AND CONCLUSIONS

5.1 Allegation concerning the failure to comply with the Bank's project cycle

Details of the allegation

5.1.1 The Complainant makes several allegations about the non-compliance of EIB with the Bank's project cycle, including the "violation of the 30-days rule by not making available the required and finalised EIA for the whole project at least 30 days before the project was presented to the Board".

5.1.2 According to the Complainant, the Bank has also failed to make publicly available a justification to waive this rule. Although the Bank negotiated with the Borrower that the finalisation and submission by the project sponsor of the EIAs for the substation extension and 330 kV connection lines are a condition for disbursement, this is not sufficient justification, according to the Complainant, to waive the 30-day rule because "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".

5.1.3 Besides, the Complainant alleges that the EIB allows public consultations to continue after loan approval of the Board of Directors. The negotiation and signature of loans can take place without ensuring that the EIA and public consultation has been finalised; the EIB limits itself to integrating a standard provision regarding EIAs and public consultation in the finance contract, which the Complainant considers is not acceptable for projects located outside the EU.

5.1.4 Lastly, the Complainant alleges that, based on the above, the EIB has demonstrated the lack of knowledge about the plans of the project promoter regarding the finalisation of the EIA and public consultation.

EIB-CM Findings

5.1.5 Concerning the disclosure policies of the Bank for EIAs, the Bank's Environmental and Social Practices Handbook refers to the Bank's rule that the Non-Technical Summary (NTS) for all investment projects located outside the European Union, and requiring an EIA, shall be made available at a minimum of 30 days before the project is presented to the Board.

¹ Parts C and B for EBRD are equivalent to components (iii) and (iv) of paragraph 3.1

- 5.1.6 This rule was approved by the Bank's Management Committee on the 20 December 2005 and therefore it was valid and applicable at the time of the project's Board approval, July 2007. The Bank's definition of "Investment Project", as stated in the Note the Management Committee, typically refers to classical stand-alone investments, involving one scheme and one promoter and excludes multi-scheme projects. Multi-scheme projects include several, even a large number of schemes. In such cases, the schemes often have common features (common promoter, objectives or sectors), but the components can be located on different sites and both the requirements and the timing of EIA can be different. Due to the timing issue, the Bank's Management Committee acknowledged that it would not be practically possible to publish all EIA reports for each scheme prior to the Board presentation and therefore excluded the multi-schemes projects from the 30-days rule in December 2005.
- 5.1.7 The case under consideration was presented to the Bank's Board as a complex project with multiple components that are to be implemented in different timeframes. As such, the Bank's services treated this investment as a "Multi-scheme Project". The Bank's report presented to the EIB's Board members indicated that the ESIA was completed only for the two components of the project that are related to the 750 kV transmission works.
- 5.1.8 The Summary of the Board Report mentioned that *"The Promoter has provided an EIA study for the 750 kV transmission works, in line with EU requirements, including public consultation, with the technical assistance from EBRD. The EIA covers as well the social impacts related to these works and constitutes an Environmental and Social Impact Assessment (ESIA). The project components that are related to closure of Chernobyl substation² and to the transfer of its operations to Kiev substation are at an early stage of planning, and the ESIA studies related to these components are not yet done. The Bank will require that these ESIAs will be prepared in line with EU requirements and concluded before the start of the works and first disbursement."*
- 5.1.9 As part of the project related conditions Section 4.11 in Annex 1 of the Board Report stipulates that: *"The Environmental Impact Assessments, including public consultation, for the 750 kV lines, Kiev substation extension and concerning 330 kV lines shall be concluded, in form and content to the satisfaction of the Bank, prior to the start of the works and disbursement related to these components"*.
- 5.1.10 Subsequently, and in line with the Board decision, art 1.04B (vi) of the Finance Contract signed in October 2008, establishes the following condition precedent to each disbursement: *"with regard to the relevant components of the Project (namely the 750 kV lines, Kyiv substation extension and connecting 330 kV lines), the Environmental Impact assessment (EIA), including public consultation, in form and content to the satisfaction of the Bank, and in accordance to the principles and requirements of the Council Directive on the assessment of the effects of certain public and private projects on the environment (85/337EEC, as amended by 97/11/EC and 2003/35/EC)"*.
- 5.1.11 In addition, there is not any contradiction between the Project Description of the Bank's Board Report and the Finance Contract. The main items are described in both documents although with more detail in the Finance Contract.
- 5.1.12 From the presentation made by the services in the Board Report, it follows that the Board had been informed that the project was composed of different items with different implementation timeframes, and therefore it qualifies as a "Multi-scheme Project", according to the Bank's management decision of 20 December 2005. Therefore the 30-days rule isn't applicable to the project.
- 5.1.13 However, whether the first component(s) to be financed under a "Multi-scheme project" could be subject to the same 30-days rule as an "Investment Project" is a question that is open for interpretation. Note is taken of the fact that, in the case under consideration, the services presented this "multi-scheme project" to the Board only after publication on the Bank's website of the Project Description and the Non-Technical Summary (NTS).

² The two 60 km, 330 kV transmission lines and several smaller transmission investments related to the 750/330 kV substation of Kiev.

- 5.1.14 In addition, it appears, that there is a contradiction between the summary and the content of the Board Report concerning the public consultation for the first two components of the project. As indicated in 5.1.8 of the Board Report, the summary states that *"The Promoter has provided an EIA study for the 750 kV transmission works, in line with EU requirements, including public consultation..."*; however, page 11 of the Board Report states: *"The public consultation of the ESIA is at present on-going, and the process is expected to be concluded by the end of 2007"*. The CM-EIB has contacted the services to request clarifications on this statement in order to clarify, mainly, whether an ESIA can be considered completed without closing the public consultation. The Bank's Services have confirmed that the internal guidance, as confirmed by the Bank's Transparency Policy, is to publish the NTS/ESIA as soon as it is available, and in order to facilitate public access to these documents.
- 5.1.15 Concerning the allegation that *"the intention of the (EIB's Environmental) 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 Management Decision of 20 December 2005 will automatically exclude the application of the rule to *"Multi-Scheme projects"*.
- 5.1.16 Regarding the allegation that the Bank ignores the plans of the promoter concerning the finalisation of the EIA and the public consultation, the Bank's services informed the EIB-CM that several discussions had taken place between themselves, the EBRD team, the Project Implementation Unit and the Promoter to follow up the status of this matter. It should be pointed out that the Bank's team had identified the need of expanding the Project Description to the four components of the project already at the Bank's appraisal stage, which was subsequently accepted by the Client and EBRD. The Condition Precedent for disbursement is also very clear in requesting the completion of full ESIA's, including public consultation, before disbursing the funding.

EIB-CM Conclusions

- 5.1.17 Concerning the allegations of non-compliance with the EIB's Project Cycle, the EIB-CM has not found any grounds supporting claims to maladministration regarding the way the proposal was presented to the Board of Directors, according to the rules in force at the time of the Board of Directors' approval.
- 5.1.18 The Bank's services should ensure the compliance with the legal obligations embedded in the Finance Contract and authorise disbursements only after the completion, including public consultation, of the relevant ESIA's.
- 5.1.19 The above reasoning takes away the grounds for the Complainant's allegation that the Bank negotiates and signs the contract before the completion of the ESIA studies. As indicated in the Bank's handbook, the EIB's project cycle allows for preparation of ESIA's, including public consultations, in Multi-Scheme projects either before or after the Board's discussions.
- 5.1.20 On a related matter, the EIB-CM verified that the Environmental Handbook applicable at the time of the Board approval is dated July 2006. This Handbook was approved by the Management Committee and was issued only for internal use. The revised version of the Handbook of September 2007 was however made publicly available to third parties. Concerning the 30-day rule, the internal version of July 2006 does not make an explicit distinction between *"Stand-Alone"* and *"Multi-Scheme"* projects but it does make a reference to the Bank's decision of 20 December 2005 that explicitly considered this distinction. This omission in the internal version of the Handbook has been corrected in the subsequent versions for external publication. Page 15 of the Handbook of September 2007 defines Programmes for multi-schemes operations with a feature of commonality (Promoter or objective or sector). Examples include R&D corporate programmes, infrastructure programmes and municipal programmes. The revised external version of February 2010 defines *"Investment Loans (IL)"* as follows: *"this covers all operations (whether single or multi-schemes, single or multi-promoters) where the information about the underlying investment expenditures is sufficient to analyse the project in one stage. The ILs can be further divided into programmes for multi-schemes operations with a feature of commonality (promoter, objective or sector). Examples include energy transmission and distribution infrastructure programmes, R&D corporate programmes, infrastructure and municipal programmes"*.

- 5.1.21 However, it is also noted that the reference to exclude Multi-Scheme projects from the 30-day rule is only mentioned in a parenthesis of the Box D of the Environmental Handbook (public version of February 2010). It is then recommended to expand and improve this reference in the content of the Handbook.

5.2 Allegation concerning the failure to provide reliable and updated access to environmental information

Details of the allegation

- 5.2.1 The Complainant alleges that the Project Description on the Bank's website has "not been updated after the appraisal had been completed, the limited public consultation had been concluded and the ESIA had been finalised", and therefore the project description presents misleading and false information about the project status and the EIA process. The Complainant emphasises that the project description "provided false information as the promoter was not preparing a project EIA in line with EU requirements, but rather only for a part of the project. This information had been 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". As a result, the Complainant accuses the Bank of violating *Article 4 paragraph 2, Article 5 paragraph 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*.
- 5.2.2 The Complainant also says that the project is placed on the Bank's website under "Project Financed" although the Bank has not made any disbursement. The use of the wording "financed" might mislead the external reader.
- 5.2.3 Moreover, the Complainant alleges that a series of documents that contain environmental information (Value Added Sheet, Environmental Appraisal Report, Environmental Assessment Forms (D1/D2), Finance Contract) have never been disclosed on the website, contravening the same Art 4.1 of the Regulation 1367/2006 that 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..."*.

EIB-CM Findings

- 5.2.4 The Project Description was first published on the Bank's website in June 2007 and was expanded and modified in February 2012, following the first letter of the Complainant. In November 2012, it reads as follows: *"Construction of a 350 km long 750 kV AC transmission line from Rivne in north-western Ukraine to Kiev in central Ukraine and a 135 km long diversion of the existing Khmel'nitska to Chernobyl power line into the Kiev substation, extension of Kiev substation and two 60 km, 330kV lines connecting Kiev substation to 330 kV network. The project would constitute a major electricity backbone link from the Kiev area to western Ukraine, ultimately connecting to the Trans-European Energy Networks (TEN-Es)."*
- 5.2.5 The Environmental Aspects published on the Bank website reads as follows: *"Due to its size and technical characteristics, the project, if located within the EU, would fall under Annex I of Directive 97/11/EC and would thus require an Environmental Impact Assessment (EIA). The promoter is preparing an EIA in line with EU requirements, including public consultation with Technical Assistance (TA) from the EBRD. The EIA is expected to be completed before the start of the works. The progress in the EIA and the assessment of social impacts will be reviewed during appraisal."*

- 5.2.6 The only attachment included on the Bank's website included at the time of the Complaint (July 2012), is the Environmental Assessment for the 750 kV transmission works finalised in May 2007. The Bank's services also confirmed that the additional studies are under preparation. In this regard, the EIB-CM was informed that an initial scoping report was issued in October 2012 by the environmental consultant developing the ESIA's for the Kyiv substation extension and 330 kV lines and that the draft ESIA's will be published as soon as they are received from the promoter. The EIB-CM was also informed that the delay in publishing additional information/documents is mainly due to delays in the finalisation of technical prerequisites to the preparation of ESIA and the procurement of the environmental consultant that will prepare the additional environmental reports.
- 5.2.7 As discussed in 5.1, the project has been categorised as a "Multi-Scheme project", and the Project Description as phrased in 5.2.4 addresses the issue of the "Multi-scheme projects". Concerning the description of Environmental Aspects and taking into account that there has not been any new environmental document completed up to date, the paragraph of 5.2.5 also presents a fair view of the situation. However, the Complainant is partially right in signalling that the information has not been updated, particularly as the last statement still refers to "The progress in the EIA and the assessment of social impacts will be reviewed during appraisal". Taking into account that (i) the Bank's appraisal stage ends at Board approval and that (ii) the Finance Contract has been signed in 2008, the reference to the "appraisal" is misleading, and this statement should be reviewed.
- 5.2.8 It has been drawn to the attention of the EIB-CM that the Bank's website includes "Explanatory Notes" related to the Project Summaries published in the website and clarifies what type of information is updated. The EIB-CM noticed that these Explanatory Notes are only placed under the heading of "Projects to be Financed" but not under "Projects Financed".
- 5.2.9 Regarding the allegation of the Complainant that the Bank is not preparing a project EIA in line with EU requirement, there is no indication that can substantiate such statement. As indicated in paragraphs 5.1.8 and 5.1.9, the references to EU directives are clear in the Bank's documents both at Board's report and the Finance Contract.
- 5.2.10 Concerning the confusion caused by the use of the wording "Project Financed" in the WebForm, the Bank uses on its website only two type of denominations: "Projects to be financed", to provide information on projects before presenting them to the Board, and "Projects Financed" that include projects already signed by the Board. This is standard practice for all projects. Moreover, in the online Project WebForm, the Bank shows the status of the project in the last box of the table. In the case of the Rivne-Kyiv High Voltage Transmission Line, the Status says "Signed 24/10/2008". This statement should therefore reduce the potential confusion of the external reader.
- 5.2.11 Concerning the allegation of access to information, it should be highlighted that the documentation in question is available to any person requesting it in accordance with the Bank's Transparency Policy and that the obligation for the EIB to allow access to this documentation does not imply that the EIB must publish all the documents on its website, this being limited to the most important documents as described in the same Policy at point 5.2 of its Annex 1 (page 24).

EIB-CM Conclusions

- 5.2.12 The current information published on the website provides, in general, sufficient and accurate information about the project under consideration.
- 5.2.13 In the case of projects with a long preparation period, like the one under consideration, It is advisable however to review this information more often and especially when major milestones are achieved: appraisal, negotiation, and signature of the contract. In the case under consideration, the reference made to "appraisal" under Environmental Aspects should be updated as soon as possible.

- 5.2.14 It is unavoidable that the use of general terms regarding the Bank's projects (Projects Financed vs Projects to be financed) as these are published on the website, might lead to different interpretations amongst external readers. This is however an issue that falls outside this particular project and should be revised at a general level.
- 5.2.15 The Transparency Policy of the Bank is clear about the publication of documents related to the Environmental Matters and therefore there is no obligation to publish more reports, though they can be made available to the Complainant after a formal request, like it was done with the environmental section of the Bank's appraisal report.

6. RECOMMENDATIONS

- 6.1 It is recommended that the Bank's services ensure that the remaining EIAs are carried out in compliance with the directives of the EU, as approved by the EIB's Board of Directors, and the relevant information published in the website when appropriate.
- 6.2 It is also recommended that the Bank updates and improves the public information to external parties concerning the non-application of the 30-days rule for Multi-Scheme Programmes (as opposed to Investment Loans).
- 6.3 Concerning the request of improving public disclosure and more specifically "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 consultation for the remaining parts of the project", EIB-CM recommends that the project team updates the current WebForm related to Environmental Matters
- 6.4 Finally, concerning the request to provide online access through the EIB website to further environmental information, this can be made available upon receipt of the formal request by the Complainant in accordance with the Bank's Transparency rules.

F. Alcarpe
Head of Division
Complaints Mechanism
21 December 2012

A. Abad
Senior Complaints Officer
Complaints Mechanism
21 December 2012

LIST OF ACRONYMS

CD	EIB Management Committee
EPC	Engineering, Procurement and Contracting
EBRD	European Bank for Reconstruction and Development
EBRD-PCM	Project Complaint Mechanism of the EBRD
EIA	Environment Impact Assessment
EIB	European Investment Bank
EIB-CM	Complaints Mechanism of the EIB
EO	European Ombudsman
ESIA	Environmental and Social Impact Assessment
EU	European Union
NTS	Non-Technical Summary