

Comments from Green Alternative to the European Bank for Reconstruction and Development (EBRD) on the draft Strategy for Georgia

16 September, 2016

Introduction

The following are comments from the Green Alternative to the EBRD draft country strategy for Georgia released on August 3, 2016. We hope that our comments will be taken into account and the final strategy will address properly existing challenges facing Georgia will result in funding environmentally and socially sound projects and programs.

The draft country strategy reviews different concerning aspects of Georgia and defines 4 strategic directions to face those in the forthcoming strategy period. However, we should stress that EBRD country strategy priorities largely ignores those direction defined by the European Commission approved single support framework for Georgia including the Agriculture and regional development, as well as the sustainable transport sector.

Our comments are mainly focused on strategic directions related to the energy sector and the promotion of the Public Private Partnerships.

Public Private Partnership (PPP)

We noticed that EBRD, claims that ‘A key pre-condition for closing the infrastructure gap in the country remains the development of adequate capacity and legislative framework enabling more PPP projects in the transport and energy sectors” and that Bank plans “to support the development of the regulatory framework for PPPs, by assisting in drafting relevant primary and secondary legislation and strengthening the authorities’ capacity in undertaking and implementing the concessions and PPP legal reform”.

The Bank envisages the need for promotion and support “solutions to the development of Georgia’s transport infrastructure in order to further strengthen regional economic links. In particular, EBRD will seek to contribute to further develop the East/West³ and North/South⁴ transport corridors connectivity, in cooperation with other MDBs (including AIIB) and encourage PPP structures if and where possible.” Bank will also look for development of ports and airports. To achieve the results bank plans to ensure the policy dialogue on PPPs and to draft legislation.

It should be noted existing experience of the Bank in promoting PPP projects are quite negative. Examples of controversial PPP projects funded by EBRD include the

Sofia water concession in Bulgaria¹ not bringing any substantial improvements in water supply or affordability, the Zagreb Wastewater Treatment Plant in Croatia² that cost to Zagreb city 180 million EUR debts towards the concession company and the EBRD approved D1 motorway in Slovakia³. Taking into account existing negative experience in the portfolio of the EBRD we strongly believe that promotion of the PPP as last resort for infrastructure development should be taken out from the Strategy.

In general, the EBRD already supports different types of PPP schemes in Georgia's trough financing the hydro projects with different type of contractual arrangements – Minimum Revenue Guarantees, Take or Pay contracts and stabilization clauses – that investors are putting in place through PPPs to ensure guaranteed high rates of profit. Such guarantees are a crock of gold, providing legally enforceable liens on future public flows of money that are irrevocable for the length of the contract.

Shifting the same model in other sectors of economy like transport and connectivity, without the necessary affordability assessments, may lead to future increase of costs without proven quality services.⁴

Therefore we recommend that the EBRD's country strategy for Georgia will direct investments in the transport and connectivity sectors only conditional on affordability assessments and ensuring value for money for consumers of public services.

Investments in renewable energy

According to the draft strategy one of the main priority of the Bank is “to support development of Georgia's renewable energy resources by investing in small, medium and large hydropower plants (including the Nenskra HPP alongside ADB), and will explore opportunities in wind power generation, as well as solar depending on affordability, with both foreign and local private investors.”

It should be noted that this priority not only is not derived from information provided in other parts of the strategy but contradicts it.

According to the chapter 2.8 “Resource efficiency and climate change context” electricity production in Georgia relies mainly on hydro power sources (78 per cent of the total electricity production) and diversification of the state's energy mix and decoupling of economic growth from energy consumption by enhancing rational energy use can benefit the State. The same chapter outlines challenges with respect to climate change stating that “There are growing concerns about long-term climate change impacts on Georgia's glaciers, which have significant implications for water resource management and hydropower. Water is scarcer in the eastern regions than in the western regions and summer droughts are increasingly expected which will put pressure on water availability”.

Therefore it is unclear how the investments in Hydro development can contribute to diversification of the energy mix or address negative implications on water availability in the future because of climate change.

In addition it is notable that a National energy strategy is still missing, as well as energy needs assessment of the country, which can set the direction and targets for how hydro power fits together with all renewable energy and energy savings alternatives⁵.

While it is welcome that the Bank plans to support solar and wind energy beyond the hydro, for these renewables there is set condition “depending on demand and affordability” without further clarification. In case of Hydros

1 <http://bankwatch.org/public-private-partnerships/case-studies/sofia-water-concession-bulgaria>

2 <http://bankwatch.org/public-private-partnerships/case-studies/zagreb-wastewater-treatment-plant-cupovz-croatia>

3 <http://bankwatch.org/public-private-partnerships/case-studies/d1-motorway-phase-1-slovakia>

4 Licensed Larceny: Infrastructure, Financial Extraction and the global South by Nicholas Hildyard, The Corner House

5 Such demand is in line with recommendations of the World Commission on Dams that stipulate a strategic energy development plan, which should be based on energy demand assessment process and best scenario of meeting these needs by taking into account not only technical, economic and financial but also environmental and social issues too. http://www.unep.org/dams/WCD/report/WCD_DAMS%20report.pdf

such condition is not set that raises questions. Despite the fact that EBRD supports development of a wind power plant in Gori we fear that supporting renewables will be mainly focused on supporting Large Hydros (As indicated in strategy) as Georgia still does not have proper legislation adopted that enables the development of other renewables.

Therefore we recommend that a future EBRD support in renewable energy is conditioned on the development of a National Energy Strategy, which takes due regard of climate change impacts and the need to diversify the country's energy mix away from hydropower.

Investments in Hydro projects

According to the draft strategy “The Bank continued to play a leading role in the development of the country's renewable energy resources. EBRD financed five projects in the renewable energy sector, adding over 1 thousand MWh/y renewable capacity, with a total financing of €132.4 million for large and small HPPs, including Dariali HPP and Shuakhevi HPP”.

While the Bank notes its “leading role” in the development of renewable energy sources, it fails to note that projects funded or planned to be funded by the Bank have considerable negative environmental and social impacts and thus caused protests across rural Georgia at the sites of Nenskra, Shuakhevi and Dariali. For example, Nenskra HPP has become subject of protests by the local Svans due to economic displacement, physical relocation and the geological risks as well as flawed public consultations. Multiple protests were held against the construction works on Shuakhevi HPP as the true hazards associated with the plant were not properly estimated and resulted in deterioration of lands and houses in nearby villages.; In the case of Dariali HPP people in Stepantsminda held multiple protests against the project because of inadequate hydrological and geological assessments. While the ESIA report determined geological risks to be minimal during the operation phase, the construction works have already faced delays and technical difficulties due to mudflows that already caused deaths of people⁶ in 2014.

Green Alternative has already submitted two complaints regarding Paravani and Dariali HPPs to the EBRD's project complaint mechanism (PCM) in 2011 and 2014. In case of Paravani PCM found project noncompliance with the Bank's environmental social policy (PR1, PR6 and PR10). Despite the fact that the final compliance review on Dariali HPP is not available yet according to the preliminary findings PCM found noncompliance in the Dariali project case as well.

Therefore the Bank's attempt to present its involvement as “leading”, based only on criteria such as adding additional capacity and attracting investments, is more than alarming as problems of non-compliances with its own Environmental and Social Policy, as well as significant environmental and social impacts, are not taken into account as lessons learned.

In addition to our recommendations above, we recommend that the EBRD acknowledges the difficulties of its past hydropower investments and demonstrates in its new country strategy for Georgia that it has learned some lessons from problematic hydropower projects like Shuakhevi and Dariali. Furthermore, we recommend that the EBRD demonstrates a higher commitment to applying its Environmental and Social policy in the hydropower sector in Georgia and conditions its involvement in projects like Nenskra on successful resolution of environmental and social conflicts in the Svan communities.

Confidential contracts - Shuakhevi and Nenskra HPPs

Since June 2014 the Government of Georgia has already signed more than 80 controversial contracts with hydropower developers that limit competition and create fiscal risks for the state budget, including contracts on

⁶ http://greenalt.org/wp-content/uploads/2014/06/Dariali_Statement_eng.pdf

Nenskra and Shuakhevi HPPs. It should be noted that exactly contracts on EBRD backed Nenskra and Shuakhevi HPPs are confidential thus contradicting the main principle (Transparency of energy sector) of the EU. Unfortunately according to the draft strategy for Georgia, funding of Nenskra HPP represents priority for the Bank.

While the EBRD recognizes in the draft strategy the importance of the AA⁷ and relevant commitments undertaken by Georgia, it should also recognise that further supporting existing practice of development of non-transparent hydros puts on hold and makes impossible for Georgia to implement effectively the necessary reforms towards an AA.

We therefore recommend that the country strategy for Georgia prioritises the transparency of energy deals and conditions further support in the sector on fair competition and proper feasibility and fiscal risk assessment.

Energy efficiency and EBRD

It is highly welcome that the draft strategy recognizes improvement of energy efficiency across all sectors of the economy (e.g., industry, urban transport, public buildings). This is very important because of the high energy intensity of Georgia (30 per cent above the EU28 average). According to the draft document operational focus will be “to foster resource efficiency across all sectors of the economy (e.g. industry, urban transport, public and private buildings), both through direct investments and dedicated resources efficiency credit line facilities via local private banks.”

Despite abovementioned Georgia still has not formulated a state vision or strategy on energy efficiency. While according to the draft “the Ministry of Energy and of Economy and Sustainable Development are in the process of drafting Georgia’s first National Energy Efficiency Action Plan (NEEAP) with EBRD’s support”⁸ the document has not been disclosed thus it is not clear neither the energy efficiency targets nor its impact on future energy needs of the country that is important component for the energy security of the country.

We strongly believe that, until determination of the energy efficiency targets and their impact on energy demands, the EBRD should stop any lending to Georgia’s energy sector for generation, while put the efforts to ensure development of concrete energy efficiency lines, including building sector, industry, transport and etc.

In the current situation we recommend that the EBRD should assure and assist Georgia’s Ministry of Energy in the development of proper energy strategy and energy needs assessment, ensure adoption of the law on energy efficiency with the wider participation with CSOs in order to really promote energy efficiency in Georgia. It also can assist the ministry to set up institutional structures for facilitation of sustainable energy development and addressing the legacy of the past, including regulations for maintenance of existing HPP infrastructure.

we recommend that as a priority the Bank should define and support the government of Georgia, as well as private owners, in HPPs rehabilitation of existing HPPs including cleaning up of reservoirs from sediments. In addition the EBRD should avoid investments in Greenfield projects until the required strategies are not developed and additionally the safeguard policies implementation capacity is not ensured.

In general, despite the claims that priority will be given to “Support renewable energy, resource efficiency, and climate change adaptation to enhance competitiveness and resilience of the economy” benefiting Georgia, the EBRD is still seeking to ensure the further development of Georgia as an energy exporter country, despite the lack of clear potential and economic benefits for the country. While the EBRD plans to enter in policy dialogue with the government to “provide technical assistance and advisory for the development of a power trading platform

⁷ EU-Georgia Association Agreement;

⁸ 2.8 Resource efficiency and climate change context;

with focus on trade with Turkey, the largest and most open energy market in the region”, it misses the policy dialogue need to ensure the sustainable energy planning model and rather tries to address some aspects of the policy that are largely already covered by other donors (USAID, EU, UNFCCC and etc.).

EBRD approach towards Labour rights and Gender in Georgia

As the priority 1, EBRD considers to “support private sector competitiveness through innovation, enhanced value added and convergence with DCFTA standards and obligations”. That’s really important sector to be supported.

However, despite the fact that EBRD recognizes the fact that “gaps still persist between Georgian legislation and EBRD PR2 requirements with respect to child labour, collective bargaining, retrenchment, worker accommodations, gender discrimination and non-employee workers”, the EBRD commits only to “continue its efforts to ensure that clients’ HR policies and labour practices are compliant with relevant ILO conventions as ratified by Georgia”. Instead we recommend that the EBRD should enter in policy dialogue with the Georgian government and Investors council, to ensure support for eradication of the gaps in Labour Code of Georgia in order to ensure its compliance with EBRD own standards and DCFTA requirements.

It should be stressed, that in accordance with the Bank’s Gender strategy 2016-2020, “ the Bank anticipates that it will undertake dialogue beyond the transaction level with clients and partners to contribute to an enabling environment for gender equality in its CoOs20. Policy dialogue approaches will be country specific, according to predefined country priorities and formulated within the country strategies as these are developed.” Despite the fact, that in the draft strategy for Georgia we see very through gender analyses, that actually suppose to raise alarm due to the high gender pay gap (38,9%), as well as nonexistence of equal-pay for equal-work legislation, mandate on non-discrimination in hiring, the problems with full maternity pay for women employed in private sector⁹ and etc. However, despite commitments of strategy that Bank will undertake the reform advocacy, policy advise and capacity building none of those measures re defined by 2017-2020 Georgia country strategy.

We recommend that the country strategy for Georgia will set clear targets and will define clear measures for effective policy dialogue and legal reform to ensure the creation of robust legal framework that will safeguard labour and gender rights by its clients in the country.

⁹ Actually according to law the only 183 days are paid by government, however, it shortcut 600 GEL for all 183 days, and not based on women’s salary and annual record. In case if the woman is employed by public sector, the pay will raise up to the 1000 GEL. Itself that is discriminatory approach. In draft strategy we read “The mandatory maximum length of fully paid maternity leave is 183 days, (paid at 100 percent of the salary by the government³⁵), and unpaid maternity leave is 547 days. ³⁶”