

**Open letter to Executive Committee of the European Bank for Reconstruction and Development (EBRD)
from Ukrainian non-governmental NGOs**

Copy to: Mr Alistair Clark, Managing director, Environment and Sustainability, EBRD

Josue Tanaka, Managing Director, Energy Efficiency and Climate Change, EBRD

1st March , 2013

Subject: on cancelation of Hydropower LLC small hydropower plants (USELF)

Dear Sirs/Madams,

We, undersigned non-governmental Ukrainian organizations, appeal to you with the request to stop Hydropower LLC project developed under Ukraine Sustainable Energy Lending Facility (USELF) because the project had been prepared with violations of Ukrainian national legislation on environmental impact assessment (EIA) and public participation.

EBRD USELF projects are meant to demonstrate the potential for renewable energy projects development and, as voiced by EBRD during public consultation on Strategic Environmental Review of USELF, to introduce 'best practices' including on public participation into Ukraine's renewable energy sector.

The reality is that one of the very first projects was developed in the most environmentally sensitive and biodiversity rich area of Ukraine (Carpathian Mountains) with very poor quality of EIA and with no proper public participation despite the requirements of Ukrainian law. We strongly believe that EBRD should not tolerate negligence of national law by its clients as it is clearly said in EBRD Environmental and Social Policy: *"Compliance with national law is an integral part of all Project Requirements"*¹.

According to bank's Environmental and Social Policy (2008) the project has been categorized as "B", so no separate EIA in line with EBRD requirements was prepared. However, according to national legislation project was subject to an EIA which was finalized in 2011 but with a number of violations and of poor quality:

1. **No proper public consultation.** Numerous violations of "Procedures on public involvement in discussions about decisions that may affect the environment" and of respective state construction standard² were identified, which made proper public participation on the stage of EIA impossible: no information through media about public consultation meetings, about access to EIA materials and possibilities to submit comments;

2. **Ecological expertise conclusions are not lawful.** Positive conclusions of ecological expertise (obligatory part of permitting procedure) were issued on March 11, 2011. However, they cannot be regarded as lawful as they were given without project undergoing proper public consultation in line with the requirements of above mentioned procedures. They are also of poor quality. For example, in ecological expertise conclusions it is stated that project will have no impact on environment (including water resources, flora and fauna)

¹EBRD Environmental and Social Policy, 2008, p. 7

² State Construction Standard DBN A.2.2.-1-2003 on Structure and Contents of the Materials on Assessment of Impacts on the Environment (OVNS) for Designing and Construction of Production Facilities, Buildings and Structures

although such impacts were described in EIA materials. **3. EIA materials are of poor quality, e.g.** some important aspects were not analyzed either or partially.

Based on above, these violations should have been identified during environmental due diligence conducted by EBRD's consultant and project managers at the early stages of project development and addressed in a proper way, e.g. requesting project sponsor to conduct quality EIA fully in line with national legislation requirements. Instead, project sponsor was asked by the bank to conduct additional study on fishes so to address one of the deficiencies of EIA, meanwhile other deficiencies were seems to be identified as not important and not addressed. These non-addressed issues are for example:

- Lack of analysis of climate anomalies that might lead to floods (including catastrophic, flash floods) on the safety of the station;
- Lack of analysis of project's potential impact on protected areas nearby – Cheremoshskiy National Nature Park and Verhovynskiy National Nature Park
- Lack of analysis of potential seismic activity on the safety of the station;
- No description of all the impacts of SHPPs planed on geological environment and soil erosion;
- No data on planed water reservoir, very limited parameters of planed dam for SHPP-1;
- No calculations of minimal water flow acceptable for the river section where construction is planed;
- Despite there are several SHPPs to be constructed on the same river, their cumulative impact was not taken into consideration;
- No public participation;
- No consideration of possible alternative scenarios.

Meeting with public, that took place on February 15th2013 in Ivano-Frankivsk after Ukrainian non-governmental organizations requested it³, can in no way substitute procedures of public participation which were neglected at the stage of national EIA preparation. As of the date of consultation meeting, the project has already received both necessary permission from national authorities and bank's approval. Any public opinion, comments and suggestions have had not even a theoretical chance to be taken into account at such late stage.

Non-technical summary of the project, prepared as per requirements of EBRD ESP and made available in September 2012, reads:

“Comments can also be made at the public meeting which will be announced at the project website late September 2012. The date, time and location of public meeting will be announced two weeks before the event, and advertised in local mass media.”⁴

Despite this promise, meeting with public on November 25th 2012 was notified only within one village of Goloshyno and only two days in advance, with no announcement even on company's website. Thus, we regard information disclosure within this project as insufficient. Information disclosure to potentially affected communities was not sufficient either – during public meeting they did not receive information *“on risks to and potential impacts with regards to environment ... and proposed mitigations plans”⁵*.

³ Letter of BEI # 204/01-13 from 24.01.2013

⁴http://www.uself.com.ua/fileadmin/documents/Visum%20NTS%20developer%20agreed_Eng_120907.pdf

⁵ EBRD Environmental and Social Policy, 2008, p. 70

We would also like to point out that according to EBRD Environmental and Social Policy, projects can be categorized as “A” if they “*are planned to be carried out in sensitive locations or likely to have a perceptible impact on such locations, even if the project category does not appear in this list*”⁶. The Goloshynska hydro power stations are planned on the river which is the ichthyological (fish) small scale reserve, a home for a number of rare species, listed in the Ukrainian Red Data Book, European Red Lists and located in close distance to the Cheremoshskiy National Nature Park and Verkhovynskiy National Nature Park, so there are valid arguments for considering it as “A” with a detailed environmental due diligence process. In case when it was still categorized as “B” type project, it would be highly expected and welcomed that the bank makes a visible effort to prepare it with extra transparency and attention to details on potential environmental impacts. Unfortunately, this was not the case.

Considering all of the above, **we ask the EBRD to cancel positive decision on granting EUR 1.3 million loan for Hydropower LLC project** or consider it for more environmentally appropriate site with precise implementation of national legislation and public considerations. The EBRD should not support a project developed with violations of national law requirements and bank’s Environmental and Social policy

The issue of small hydropower development in Carpathian region is proven to be a very sensitive in Ukraine both in terms of potentially significant ecological and social impacts. The Carpathian rivers are actively used for recreation and tourism. This is why it is especially important that the implementation of any projects in this region is done in strict compliance with Ukrainian environmental law and international conventions, and with careful consideration of environmental and socio-economical restrictions to avoid damage of Carpathian nature and protected species. The task is not easy, which makes it questionable whether or not it is necessary at all to develop small hydropower energy sources in Carpathian region. The issue needs to be strategically assessed on the state level, strict sustainability criteria need to be developed and mechanism for its use need to be put in place before any hydropower projects can be implemented.

Sincerely,

Oleksiy Vasyliuk, Deputy Head of National Ecological Center of Ukraine (NECU);

Bohdan Prots, Ukrainian Carpathian Programme Coordinator, WWF Danube-Carpathian Programme;

Olena Kravchenko, Executive Director, Environment-People-Law (EPL);

Dmytro Skrylnikov, Head of NGO “Bureau of Environmental Investigation” ;

⁶EBRD Environmental and Social Policy, 2008, p. 13

