

EBRD

Project Complaint Mechanism

Annual Report 2014

Report of the
Project Complaint Mechanism Officer



European Bank
for Reconstruction and Development

PCM is an independent review mechanism and this report does not reflect the views of management

Project Complaint Mechanism

European Bank for Reconstruction and Development

What is PCM?

The Project Complaint Mechanism is the accountability mechanism of the European Bank for Reconstruction and Development that provides an opportunity for an independent review of Complaints from one or more individual(s) or Organisation(s) concerning a Project which allegedly has caused, or is likely to cause, harm.

Functions of the PCM

PCM aims to address Complaints through its two functions: the Compliance Review function, which seeks to determine whether or not the EBRD has complied with its environmental and social policies and project-specific provisions of the Public Information Policy; and the Problem-solving function, which has the objective of restoring a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault.

PCM Rules of Procedure

The PCM process is governed by the PCM Rules of Procedure which set out who may file a Complaint, how a Complaint may be filed with the PCM, where a Complaint is to be addressed and, if found eligible, how it will be processed by the PCM through a Compliance Review, Problem-solving Initiative, or a combination of both. They also set out the requirements relating to timelines, reports, disclosure of and access to information, training, outreach and other issues relevant to the administration of the PCM. The current PCM Rules of Procedure were approved by the EBRD Board of Directors in May 2014 and came into force on 7 November 2014.

PCM Officer

The PCM is headed by a Project Complaint Mechanism Officer who is responsible for the day-to-day administration of the PCM, including: outreach and training; maintenance of the PCM web site and Register; Registration of Complaints; selection of PCM Experts to determine eligibility; conduct of Compliance Reviews and/or Problem-solving Initiatives; monitoring and reporting on the implementation of follow-up activities; reporting to the President and the Board on an annual basis and on such other occasions as may be necessary; and communications with the local communities, civil society organisations and other accountability mechanisms.

PCM Experts

The PCM Experts assist in the Complaints' review process and are responsible for serving as Eligibility Assessors, Compliance Review Experts or Problem-solving Experts, and may be responsible, on delegation by the PCM Officer, for any follow-up monitoring and reporting. PCM Experts are international professionals who specialise in areas such as the environment, social development, law and mediation, and operate externally to the Bank.

CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	PCM RULES OF PROCEDURE	2
	PCM Rules of Procedure 2014	2
III.	PCM PUBLICATIONS AND RESOURCES	4
IV.	PCM COMPLAINTS	5
	Overview	5
	PCM active matters in 2014 – at a glance	7
	Projects subject to PCM Complaints – issues and process	8
	Complaints registered in 2014	8
	Dariali Hydro Power Plant, Georgia	8
	South-West Corridor Road, Kazakhstan	9
	DIF Lydian (Amulsar Gold Mine), Armenia	10
	Oltenia - Turceni Rehabilitation, Romania	11
	Complaints registered in 2013 and 2012	12
	EBRD investments in EPS Kolubara, Serbia	12
	Energy Resources Phase II and Oyu Tolgoi, Mongolia	14
	Monitoring on Complaints with findings of non-compliance	16
	Boskov Most Hydro Power Plant, FYR Macedonia	
	Ombla Hydro Power Plant, Croatia	
	Paravani Hydro Power Plant, Georgia	
	Complaints suspended for registration	17
V.	PCM EXPERTS	18
VI.	COOPERATION WITH OTHER IFIs	20
	Independent Accountability Mechanisms Network	20
	<i>Open Symposium on the Practice of Independent Accountability Mechanisms</i>	21
ANNEX I:	PCM BUDGET	23
ANNEX II:	USEFUL RESOURCES AND LINKS	24
	PCM Rules of Procedure	
	Environmental and Social Policy	
	Public Information Policy	

I. EXECUTIVE SUMMARY

The Project Complaint Mechanism (“PCM”) Annual Report is prepared pursuant to Project Complaint Mechanism Rules of Procedure (“PCM RP”) 66 and describes the activities of the PCM during 2014.

In 2014, PCM completed the review of the PCM Rules of Procedure (“PCM RPs”), which benefitted from a benchmarking exercise against accountability mechanisms of other International Financial Institutions (“IFIs”), followed by extensive consultations with the Bank’s internal operations teams and external stakeholders across the countries in which the EBRD invests. PCM RPs 2014 were approved by the EBRD Board of Directors in May 2014 and are presented to external stakeholders in a series of helpful online and printed resources in a variety of languages.¹

In the course of 2014, the PCM received 14 Complaints: nine of these were deemed ineligible, while five did warrant registration by the PCM Officer. The concerns raised in the registered Complaints related to environmental and social appraisal of the projects and stakeholder engagement, environmental categorisation, community health and safety, pollution, impacts on biodiversity, land acquisition and cultural heritage. Also in 2014, the PCM continued the review process of four Complaints that were registered in 2013 and 2012 and prepared Compliance Review Monitoring Reports for three Complaints where Compliance Reviews were completed at the end of 2013.

Further in 2014, as a result of a recruitment process, three new PCM Experts were nominated by a Nomination Committee established by the EBRD President to join the PCM roster of experts. Therefore in 2015 the roster will comprise five PCM Experts that, among them, share a wealth of experience and expertise, including in areas such as the environment, social development, law and mediation.

Finally, in September 2014 PCM hosted the 11th Annual Meeting of the Independent Accountability Mechanisms Network (“IAMs Network”) at the EBRD Headquarters in London. The members met for the two-day event to discuss their work, share their achievements and opportunities and look into recent trends and changes in the work of their respective institutions. The group also agreed a number of practical plans on joint outreach activities, use of social media and cooperation with other stakeholder groups for 2015. In parallel with the IAMs Network Annual Meeting, PCM also hosted an *Open Symposium on the Practice of Independent Accountability Mechanisms* – a day-long programme that gathered representatives of accountability mechanisms, multilateral development bank management, private sector banks, legal professionals, academics and civil society to discuss the role of independent accountability mechanisms in promoting environmental, social, human rights and good governance standards in banking operations.

¹ See page 4 for a full list of PCM publications and resources.

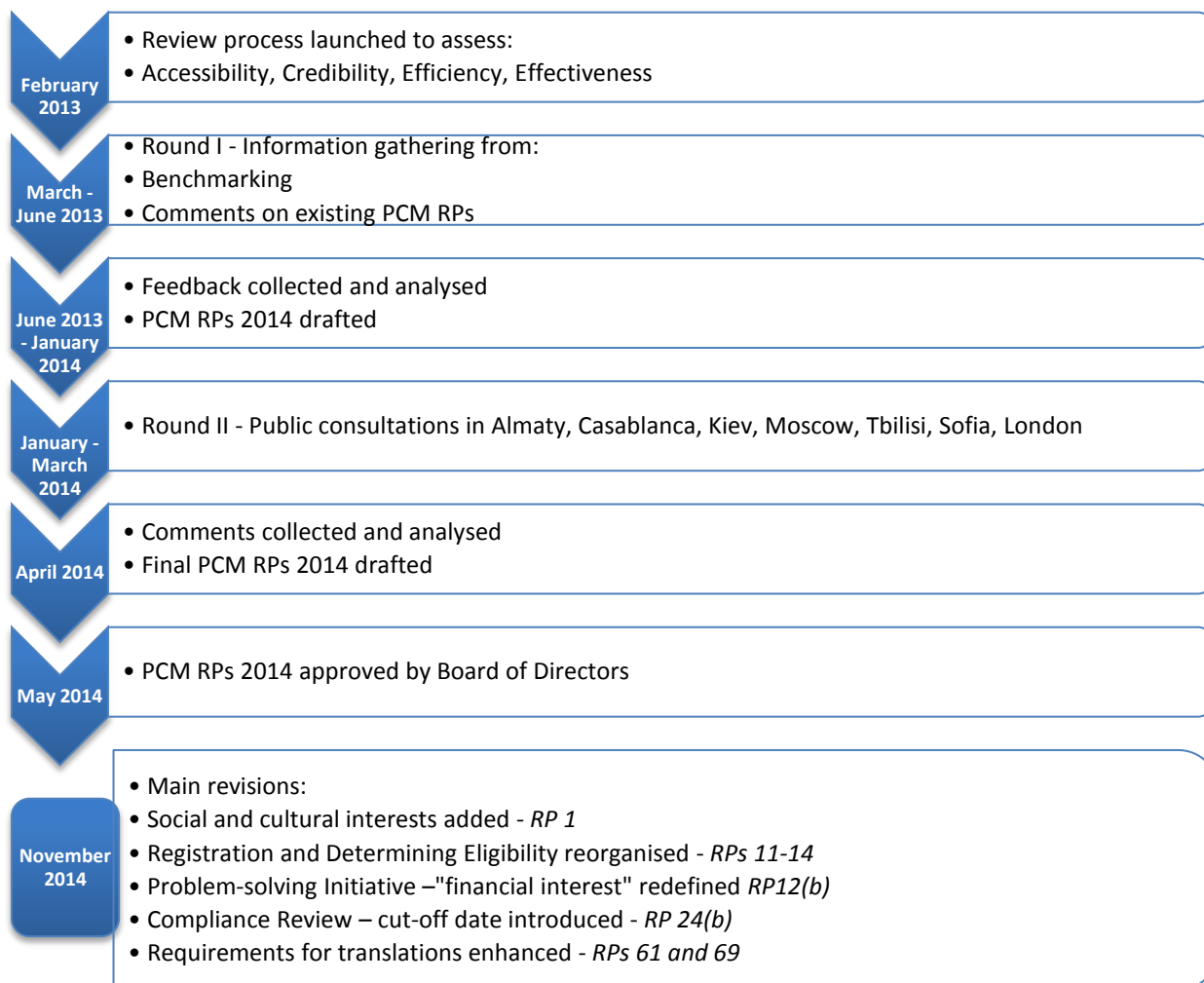
II. PCM RULES OF PROCEDURE

PCM Rules of Procedure 2014

In May 2014 the EBRD Board of Directors approved the new PCM RPs, which came into force on 7 November 2014. The new RPs apply to the review process for Complaints registered after 7 November 2014. Complaints registered before this date, continue to be processed under the PCM RPs (2009).²

The review of the PCM RPs was in line with the review cycle stipulated in the PCM RPs. The review also formed part of a larger review of the EBRD “Good Governance Policies”, including the Environmental and Social Policy 2008 (“ESP”) and the Public Information Policy (“PIP”) – throughout 2013 and 2014. For the PCM, the focus of the review was to assess the mechanism’s accessibility, credibility, efficiency and effectiveness, as well as to explore opportunities for improvement to its practices and performance.

Chart 1



² www.ebrd.com/downloads/integrity/pcmrules09.pdf

As shown in Chart 1, the review involved a benchmarking exercise comparing the PCM with accountability mechanisms of other IFIs and a two-round consultation process with the Bank's operations teams and external stakeholders. PCM engaged an internal EBRD working group and participated in seven public consultation meetings in Bulgaria, Georgia, Kazakhstan, Morocco, Russia and at the EBRD Headquarters in London. The consultation meetings were attended by over 200 individuals, representatives of community groups, national non-governmental organisations ("NGOs") and international civil society organisations ("CSOs"). The feedback from stakeholders focused on the timeliness of the Complaint process, efficiency and the requirements for registration of Complaints. It also related to the mandate of the PCM, its independence, reporting lines and its role within the EBRD. The comments offered suggestions on how to improve the mechanism's accessibility and outreach to local communities in the countries of operations.

A number of changes were introduced to the PCM RPs following the review, including:

1. People with not only economic, but also social and cultural interests in the Project Impacted area can now file a Complaint with the PCM.
2. Improvements were made to the Registration and Eligibility Assessment processes, making them more streamlined and easier to follow.
3. The definition of "financial interest" was revised to allow Complainants to benefit from a problem-solving dialogue for as long as the EBRD holds equity in the Project concerned.
4. A cut-off date for requesting a review of the Bank's compliance with its policies was introduced to ensure more timely and relevant recommendations.
5. To improve PCM's accessibility, the PCM RPs now provide for translation of PCM reports into the Complaints' originating languages. Also, the new PCM RPs and all PCM publications will now require translation into the languages of the countries of operations on a progressive basis.³

In accordance with the PCM RP 72, the PCM RPs will be reviewed again in five years' time.

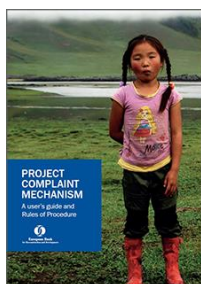
³ PCM RPs are available in a selection of languages: www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/about.html

III. PCM PUBLICATIONS AND RESOURCES

In order to ensure that the PCM RPs are effectively communicated to relevant stakeholders, in 2014 the PCM provided a number of resources to facilitate understanding these. They explain the PCM's functions and rules and facilitate the Complaint submission process by offering easy to follow guidelines. The resources include the following:



The PCM Leaflet offers a quick overview of the PCM's functions, the type of issues it can consider and a checklist for submitting a Complaint. It has been translated into Arabic, English, French, Mongolian, Russian and Turkish and is available online.⁴ The Leaflet is also being distributed in print in the EBRD's Residents Offices across the countries of operations.



The PCM User Guide and Rules of Procedure⁵ provides a more detailed explanation about the Complaint review process, timelines, reporting requirements, confidentiality provisions and other details of the different stages of the PCM process. In addition, the publication includes full text of the PCM RPs, as approved by the Board of Directors of the EBRD in May 2014. The publication is in English and will be made available in more languages over the course of 2015.



PCM also offers a Guide for EBRD Clients⁶ which explains their role in the Complaint review process, required input and collaboration and the effect of Complaints on projects. The publication is available in English and Russian.



The newest addition to the PCM resources is the online Complaint form.⁷ It was introduced to facilitate easy submission of Complaints for those with access to the internet.

⁴ www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/about.html

⁵ www.ebrd.com/news/publications/guides/pcm-user-guide.html

⁶ www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/about.html

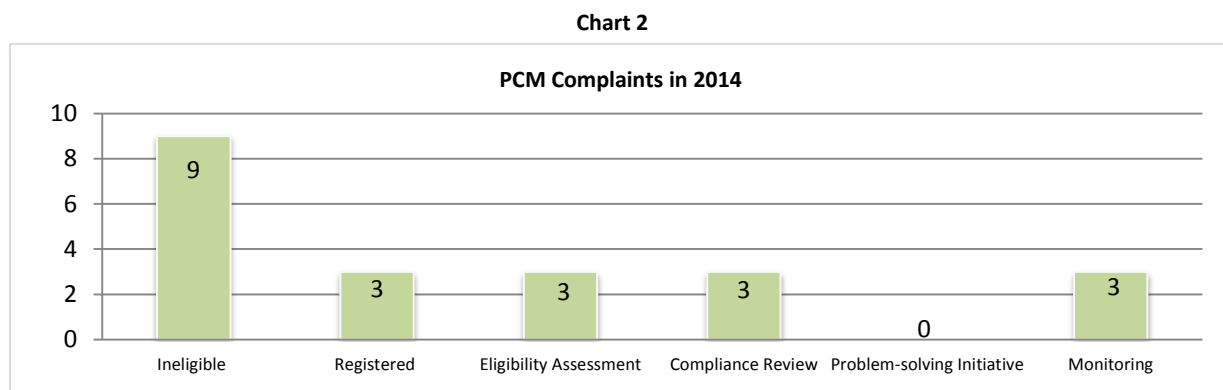
⁷ The PCM online complaint form is available in English and Russian:

www.ebrd.com/eform/pcm/complaint_form?language=en and www.ebrd.com/eform/pcm/complaint_form?language=ru

IV. PCM COMPLAINTS

Overview

In the course of 2014, the PCM received 14 Complaints and continued working on four Compliance Reviews and three Compliance Review Monitoring Reports, as displayed in Chart 2 below. Further, Charts 3 and 4 show the PCM caseload since 2010, when the mechanism was created.



Ineligible Complaints

Nine Complaints were deemed ineligible for consideration by the PCM in 2014: three raised issues not covered by a Relevant Policy;⁸ one did not relate to an EBRD-financed project; and five fell within the disqualifying provisions of the PCM RP 14.⁹ These five related to allegations of fraud or corruption (one Complaint), procurement matters (three Complaints), and Article 1 of the Agreement Establishing the Bank and adequacy of EBRD policies (one Complaint).

Registered and under Eligibility Assessment

Five Complaints warranted registration by the PCM Officer in 2014, two of which progressed to the Eligibility Assessment stage. These were in relation to the following projects: Oltenia-Turceni Rehabilitation, Romania; DIF Lydian (Amulsar Gold Mine), Armenia;¹⁰ South-West Corridor Road, Kazakhstan; Dariali Hydro Power Plant (“HPP”), Georgia. Eligibility Assessment for one Complaint registered in 2013 in relation to the EPS Power II project was also completed in 2014.

Most of the Complaints registered in 2014 were concerned with the EBRD’s ESP 2008 and related to projects in the environmental and social Category B. None of the Complaints related to the project-specific provisions of the EBRD’s PIP.

⁸ According to PCM RPs 2014 a Relevant EBRD Policy is: “2014 Environmental and Social Policy and Performance Requirements, 2008 EBRD Environmental and Social Policy and Performance Requirements, previous EBRD environmental policies, and/or project specific provisions of the 2014 Public Information Policy and previous Public Information Policies and any Policies approved in the future by the Board of Directors designated to be included in this Definition.”

⁹ According to PCM RP 14 (PCM RPs 2014): “The PCM Officer will not register a Complaint if: (a) it raises allegations of fraud or relates to procurement matters (in which case the Complaint will be redirected to the appropriate office within the Bank); (b) it relates to Article 1 of the Agreement Establishing the Bank, the Portfolio Ratio Policy or any other specified policy as may be identified by the Board from time to time; (c) it relates to the adequacy or suitability of EBRD policies; (d) it relates to matters in regards to which a Complaint has already been processed by the PCM or its predecessor IRM, unless there is new evidence or circumstances not known at the time of the previous Complaint.”

¹⁰ PCM registered two separate Complaints regarding the EBRD project DIF Lydian (Amulsar Gold Mine), Armenia.

The issues raised by the Complaints focused on the environmental and social appraisal of the projects and stakeholder engagement, including the assessment of the impacts and determination of the project impacted areas, engagement with the project affected communities and disclosure of information, as well as project categorisation. Concerns raised also included community health and safety, pollution, impacts on biodiversity, land acquisition and compensation, and cultural heritage.

Compliance Review

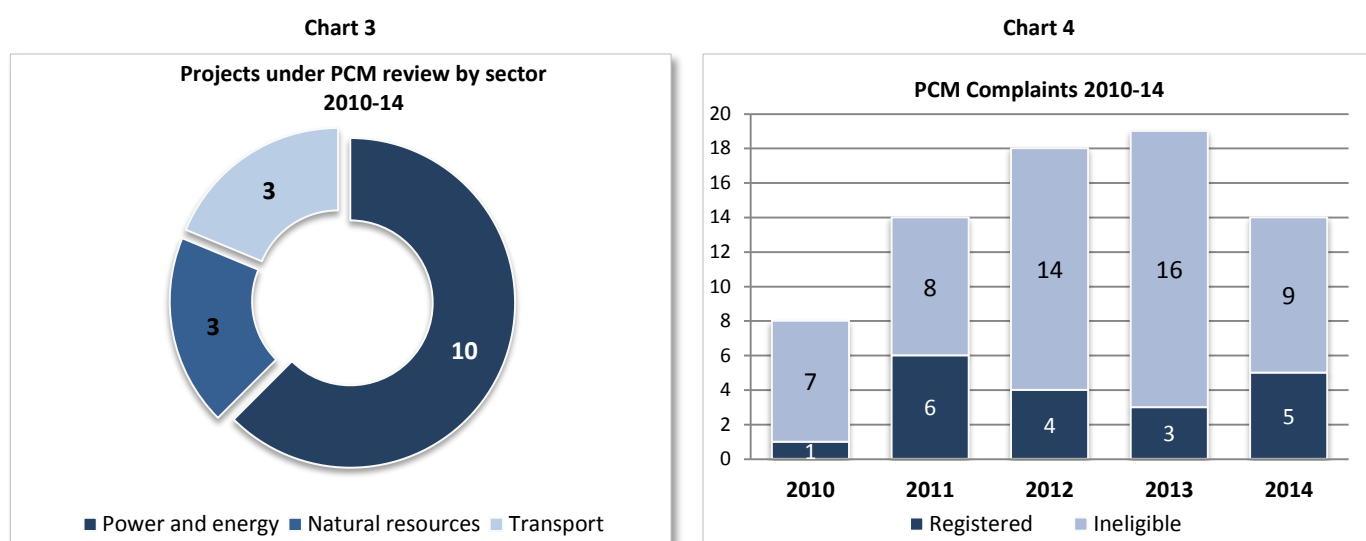
Also in 2014, PCM commenced Compliance Reviews for three Complaints registered in 2013 and 2012 in relation to the following projects: EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement, Serbia; and Energy Resources Phase II and Oyu Tolgoi, Mongolia.

Monitoring

Following the findings of non-compliance in January 2014 PCM prepared Compliance Review Monitoring Reports for: Boskov Most HPP project, FYR Macedonia; Ombla HPP project, Croatia; and Paravani HPP project, Georgia.

Page 7 of this Report presents a snapshot of all Complaints that the PCM worked on during 2014 and their stages of the review process; pages 8-16 provide further details about the projects under the PCM review and issues raised in the Complaints.

2010 - 14



As shown in Chart 3 above, since 2010 the Power and Energy sector received the most PCM Complaints (10 projects), while three projects were in the Natural Resources sector and three in the Transport sector.

To date, the PCM has processed 73 Complaints: 19 of these were registered for review by the PCM and 54 were deemed ineligible, as shown in Chart 4 above.

PCM active matters in 2014 – at a glance

	Project name	Country	EBRD sector	Complainant(s)	PCM function requested	STATUS IN 2014
2014	<i>Dariali Hydro Power Plant</i>	Georgia	Power and energy	Association “Green Alternative” and NGO “Stepanstminda”, Georgia	CR	Registered
	<i>South-West Corridor Road</i>	Kazakhstan	Transport	NGO “Blago”, Kazakhstan	PSI and CR	Registered
	<i>DIF Lydian (Amulsar Gold Mine)</i>	Armenia	Natural Resources	Residents of village Gndevaz, Armenia	CR	Joint Eligibility Assessment in progress
	<i>DIF Lydian (Amulsar Gold Mine)</i>	Armenia	Natural Resources	CSOs, Armenia: “EcoLur”, “EcoRight”, “Save Teghut”, “Pan-Armenian Environmental Front”, “Center for Jermuk Development”, “Center for Bird Lovers”, “Armenian Women for Health and Healthy Environment”.	CR	
				Gndevaz villager; Expert in environmental policy, Armenia		
	<i>Oltenia - Turceni Rehabilitation</i>	Romania	Power and energy	CEE Bankwatch Network and Frank Bold Society, Romania	CR	Registered
2013	<i>EPS Emergency Power Sector Reconstruction Loan</i> <i>EPS Power II</i> <i>EPS Kolubara Environmental Improvement</i>	Serbia	Power and energy	Center for Ecology and Sustainable Development (CEKOR), Serbia	CR	Eligibility Assessment completed Compliance Review in progress (joint CR* with the Complaint on <i>EPS Kolubara Environmental Improvement</i>)
	<i>EPS Power II</i>	Serbia	Power and energy	Center for Ecology and Sustainable Development (CEKOR), Serbia representing Milan Simic and Dragan Simic (members of project-affected community)	PSI and CR	Eligibility Assessment completed Problem-solving Initiative: NOT eligible Compliance Review in progress
	<i>Energy Resources Phase II</i> <i>Oyu Tolgoi</i>	Mongolia	Natural Resources	A group of nomadic herders, NGO “OT Watch” and NGO “Shuteen Gaviluut”, Mongolia	PSI and CR	Eligibility Assessment <u>part</u> completed <u>Energy Resources Phase II</u> Problem-solving Initiative: NOT eligible Compliance Review in progress <u>Oyu Tolgoi</u> Problem-solving Initiative: Eligibility Assessment in progress Compliance Review in progress
2012	<i>EPS Kolubara Environmental Improvement</i>	Serbia	Power and energy	Ecological Society “Vreoci” and the Council of the Local Community of Vreoci, Serbia	PSI and CR	Eligibility Assessment completed Problem-solving Initiative: NOT eligible Compliance Review in progress (joint CR* with the Complaint on <i>EPS Emergency Power Sector Reconstruction Loan, EPS Power II, EPS Kolubara Environmental Improvement</i>)
	<i>Paravani Hydro Power Plant</i>	Georgia	Power and Energy	Association “Green Alternative”, Georgia	CR	Monitoring: CR Monitoring Report I completed
2011	<i>Ombla Hydro Power Plant</i>	Croatia	Power and Energy	Zelena akcija/Friends of the Earth Croatia	CR	Monitoring: CR Monitoring Report I completed
	<i>Boskov Most Hydro Power Plant</i>	FYR Macedonia	Power and Energy	Centre for environmental research and information “Eko-svest”, FYR Macedonia	CR	Monitoring: CR Monitoring Report I completed

Projects subject to PCM Complaints – issues and process

Complaints registered in 2014

Dariali HPP, Power and Energy (project number 45542), Georgia

Environmental category: A

Relevant EBRD Policy: Environmental and Social Policy 2008

EBRD finance: senior syndicated loan of US\$ 80 million

Client: JSC Dariali Energy

PCM review stage: Eligibility Assessment to commence in 2015



On 8 December 2014 the PCM registered a Complaint regarding the EBRD project Dariali HPP, approved by the Board of Directors on 7 May 2014. The Complaint was submitted by the Association “Green Alternative” and the NGO “Stepantsminda” and is seeking a Compliance Review. The Eligibility Assessment will start in 2015 on the appointment of a PCM Expert.

The project financing is towards the development, construction and operation of Dariali HPP hydroelectric power plant. The new power plant is to be located on the River Tergi in north-eastern Georgia. The project will introduce a new majority private player into the Georgian electricity generation where state owned generators currently account for 45 per cent of electricity production. The project also has the potential to be the first energy project to deliver carbon neutral construction in Georgia. It includes a reforestation component aimed at full compensation of all greenhouse gas emissions associated with the project over its lifecycle.¹¹

The Complaint claims that the project did not undergo an adequate assessment of the environmental and social risks and lacked proper public participation in the project decision-making process. It points out a number of concerns in relation to the proposed construction site for the power plant and the related environmental sensitivities of the River Tergi. Further, the Complaint suggests that the settlement of Stepantsminda would be adversely affected by the project and these impacts also had not been taken into account.¹²

¹¹ Project Summary Document (PSD): www.ebrd.com/work-with-us/projects/psd/dariali-hpp.html

¹² Full text of Complaint: www.ebrd.com/documents/comms-and-bis/dariali-complaint-final-.pdf

South-West Corridor Road, Transport (project number 39258), Kazakhstan

Environmental category: B

Relevant EBRD Policy: Environmental Policy 2003

EBRD finance: US\$ 180 million

Client: Government of Kazakhstan

PCM review stage: Eligibility Assessment to commence in 2015



On 24 November 2014 the PCM registered a Complaint regarding the EBRD project South-West Corridor Road, approved by the Board of Directors on 11 November 2008. The Complaint was submitted by the local NGO “Blago” and is seeking both a Compliance Review and a Problem-solving Initiative. The Eligibility Assessment will start in 2015 on the appointment of a PCM Expert.

The EBRD provided a loan to the Government of Kazakhstan towards the rehabilitation and upgrade of the 102 km road section between the Russian border and the city of Aktobe, Kazakhstan, which is part of the “Western China – Western Europe” Corridor. Rehabilitation of other sections of this corridor is being financed by a number of other IFIs, including the World Bank, Asian Development Bank and Islamic Development Bank. The objective of the improvements to the “Western China – Western Europe” Corridor is to facilitate the transit of goods and passengers between Kazakhstan, China, Russia and Europe to promote regional integration.¹³

The Complaint claims that the road was poorly constructed and is not properly maintained, thus negatively affecting residents of six villages situated along the road. The main concerns include issues such as poor access, lack of lighting, lack of convenience facilities and unsafe underpasses and crossings.¹⁴

¹³ PSD: www.ebrd.com/work-with-us/projects/psd/southwest-corridor-road-project.html

¹⁴ Full text of Complaint: www.ebrd.com/documents/occo/south-west-complaint-english.pdf

DIF Lydian (Amulsar Gold Mine), Natural Resources (project number 42182), Armenia

Environmental category: B

Relevant EBRD Policy: Environmental and Social Policy 2008

EBRD finance: C\$ 8.8 million

Client: Lydian International Limited

PCM review stage: Eligibility Assessment

On 31 July and 29 October 2014 the PCM registered two separate Complaints (Complaint No.1 and Complaint No.2 thereafter) regarding the EBRD project DIF Lydian (Amulsar Gold Mine). The Bank's equity participation in the project (a series of investments) was approved by the Small Business Investment Committee (SBIC) on 21 March 2011 and 24 February 2014. Complaint No.1 was submitted by seven Armenian NGOs, an environmental policy expert and a Gndevaz villager. Complaint No.2 was submitted by over 200 residents of the Gndevaz village in Vayots Dzor, Armenia. PCM Expert Dr. Owen McIntyre was appointed to carry out a single Eligibility Assessment for both Complaints, which is currently in progress.

This equity investment in Lydian International Limited is to support its continued exploration and pre-development work in relation to the Amulsar gold deposit in Armenia, including funding the cost of technical studies, project-related operating expenses and "Feasibility Study" completion. In addition, the Bank is assisting the Client in the adoption of corporate governance and transparency standards. Lydian is one of few private mining companies undertaking exploration in Armenia, and the objective of this investment is to contribute to the development of the private sector in the region's extractive industry, as well as to offer a demonstration effect.¹⁵

Each of the Complaints alleges the failure of the Bank to ensure that the potential environmental and social impacts of the proposed mining operations have been properly assessed and to ensure compliance with related requirements on public consultation.

Complaint No.1 also requests that the project is re-categorised from B to A in line with the EBRD's ESP 2008, because the impacts could not be readily identified or assessed at the outset. It further requests that the whole territory of Armenia is recognised as the project affected zone, because the proposed mining operations would impact the country's strategic water resources, biodiversity and cultural heritage, thus affecting the livelihoods of the country's entire population.¹⁶ Complaint No.2 claims that the proposed mining contradicts international standards. The concerns from the residents focus on the location of the heap leach facility, the preparation, use, storage and waste of cyanide and associated impacts on the safety for the workers and population. The Complainants also claim that the assessment of proposed mining did not properly consider the impacts from dust containing heavy metals and potential contamination of the ground and surface water.¹⁷

¹⁵ PSD: www.ebrd.com/work-with-us/projects/psd/dif-lydian-amulsar-gold-mine.html

¹⁶ Full text of Complaint No.1: www.ebrd.com/downloads/integrity/amulsar_complaint.pdf

¹⁷ Full text of Complaint No.2: www.ebrd.com/downloads/integrity/amulsar2_complaint.pdf

Oltenia-Turceni Rehabilitation, Power and energy (project number 44732), Romania

Environmental category: B

Relevant EBRD Policy: Environmental and Social Policy 2008

EBRD finance: €200 million

Client: Complexul Energetic
Oltenia (“CET Oltenia”)

PCM review stage: Decision
of further processing of the
Complaint is being
discussed with the
Complainant due to the fact
that the project has been
suspended.



On 21 July 2014, the PCM registered a Complaint regarding the EBRD project Oltenia-Turceni Rehabilitation, approved by the Board of Directors on 23 July 2013. The Complaint was submitted by CEE Bankwatch Network and the environmental law firm Frank Bold Society and is seeking a Compliance Review.

CET Oltenia Turceni is Romania’s most important lignite fired power plant and is the core of the country’s generation sector. The project financing is towards the rehabilitation and modernisation of unit 6 of CET Oltenia’s Turceni in order to reduce its carbon intensity and to improve its efficiency, reliability and environmental standards. The modernisation is expected to result in reduction of CO₂ emissions by more than 160,000 tonnes annually.¹⁸

The Complaint alleges that the EBRD did not adequately assess the project’s environmental impacts and did not ensure proper public participation. Further, it claims that the Bank did not properly assess and did not ensure that the project complied with relevant carbon emission limit values. Also, the Complaint alleges that the Bank categorised the project incorrectly in view of the actual scope and nature of the works planned. Lastly, it claims that the Bank failed to assess the deforestation impact on some areas caused by the enlargement of the lignite mines providing supply for the Turceni power plant.¹⁹

¹⁸ PSD: www.ebrd.com/work-with-us/projects/psd/oltenia---turceni-rehabilitation.html

¹⁹ Full text of Complaint: www.ebrd.com/downloads/integrity/olt_complaint.pdf

Complaints registered in 2013 and 2012

EBRD investments in EPS Kolubara: EPS Emergency Power Sector Reconstruction Loan (project number 17829); EPS Power II (project number 27005); EPS Kolubara Environmental Improvement (project number 41923), Power and Energy, Serbia
Client: Elektroprivreda Srbije (“EPS”)

The PCM registered a number of Complaints regarding the EBRD’s investments in Elektroprivreda Srbije – Serbia’s state owned electricity generating company.²⁰ The Complaints were submitted by the Serbian Centre for Ecology and Sustainable Development (“CEKOR”), Ecological Society of Vreoci, representative of the local council of Vreoci and representatives of the local community.

Current PCM review stage:

- Compliance Review is currently being conducted by the *ad hoc* PCM Expert Glen Armstrong for the Complaints registered on 29 October 2013 and 31 August 2012 relating to all three projects above;
- Compliance Review for the Complaint registered on 23 August 2013 relating to EPS Power II project only will commence in 2015 on the appointment of a PCM Expert.

EPS Emergency Power Sector Reconstruction Loan²¹

Environmental category: B

EBRD finance: €100 million

Project Board approval: 23 October 2001

Relevant EBRD Policy: Environmental Policy 1996²²

EPS Power II²³

Environmental category: A

EBRD finance: €60 million

EBRD Board approval: 15 July 2003

Relevant EBRD Policy: Environmental Policy 1996

EPS Kolubara Environmental Improvement²⁴

Environmental category: A

EBRD finance: €80 million

Project Board approval: 26 July 2011

Relevant EBRD Policy: Environmental and Social Policy 2008

²⁰ See PCM Register for all PCM Complaints regarding the EBRD investments in EPS: www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html

²¹ PSD: www.ebrd.com/work-with-us/projects/psd/eps-emergency-power-sector-reconstruction-loan.html

²² www.ebrd.com/cs/Satellite?c=Content&cid=1395241493238&d=&pagename=EBRD%2FContent%2FContentLayout

²³ PSD: www.ebrd.com/work-with-us/projects/psd/eps-power-ii.html

²⁴ PSD: www.ebrd.com/work-with-us/projects/psd/eps-kolubara-environmental-improvement.html

The **EPS Emergency Power Sector Reconstruction** project provided financing towards environmental improvement and rehabilitation of hydro-power generation plants, including facilities in the Kolubara area, focusing on the electricity transmission system. The **EPS Power II** project provided financing towards the modernisation of equipment at the Tamnava West lignite mine, including the internal communications, controls and management systems. The **Kolubara Environmental Improvement** project provided financing to improve the efficiency and quality of the EPS's operations in the Kolubara Basin, including purchasing a new coal excavator, conveyor and spreader system.

Two of the Complaints raise issues in relation to the 'cumulative' impacts of EPS's continued operations in the Kolubara mining basin. A single Compliance Review for both Complaints is being carried out by an *ad hoc* PCM Expert Glen Armstrong. The main question considered by the ongoing Compliance Review is whether the EBRD appropriately defined the project's 'area of influence' and whether the village of Vreoci had to be identified and included in the scope of the project's due diligence process. Further, the Compliance Review is looking into whether the EBRD correctly applied the requirements of its ESP regarding the assessment of the Greenhouse Gas Emissions related to the project. Lastly, it is seeking to establish whether the Bank should have undertaken a 'strategic assessment' of the Kolubara mining basin due to its national significance and the Bank's multiple investments in EPS.

The Complaint regarding the EPS Power II project only was submitted on behalf of two individuals from the village of Vreoci, who claim that during the land acquisition process by EPS, their land plots were expropriated without appropriate compensation. The Complaint also claims that EPS lacked an appropriate grievance mechanism. The Eligibility Assessment was completed by the PCM Expert Graham Cleverly jointly with the PCM Officer in December 2014. In accordance with PCM RPs 2009, the Complaint was found not eligible for a Problem-solving Initiative because it did not meet the correct timing requirements.²⁵

The Complaint was found eligible for a Compliance Review and will examine whether the project satisfied the relevant requirements on public consultation, including regarding the establishment of an adequate grievance mechanism. The Compliance Review will start in 2015 on the appointment of a PCM Expert.

²⁵ In accordance with PCM RP 18b (ii): "...to be held eligible for a Problem-solving Initiative, the Complaint must be filed within 12 months following the last disbursement date of EBRD funds."

Energy Resources Phase II (project number 39957) and Oyu Tolgoi (project number 41158), Natural Resources, Mongolia

Environmental category: A (both projects)

Relevant EBRD Policy: Environmental and Social Policy 2008

Complaint registered: 2 August 2013

Current PCM review stage: Compliance Review

Energy Resources Phase II²⁶

EBRD finance: US\$ 180 million

Client: Energy Resources LLC

Project Board approval: 23 March 2010

Oyu Tolgoi²⁷

EBRD finance: US\$ 400 million loan and arranged syndicated loan of US\$ 1 billion

Client: Oyu Tolgoi LLC

Project Board approval: 26 February 2013

On 2 August 2013 PCM registered a Complaint (further clarifications on the Complaint were also received by the PCM in April 2014) regarding the EBRD projects Energy Resources Phase II and Oyu Tolgoi. The Complaint was submitted by a group of nomadic herders and two Mongolian NGOs – “OT Watch” and “Shuteen Gaviluut”.²⁸

Energy Resources Phase II project comprises financing towards the expansion of the existing Ukhuaa Khudag coal mine and related infrastructure, to be built in line with the latest international best practices and highest environmental standards.

Oyu Tolgoi project is financing the development, construction and operation of an open pit and underground mine and ore processing facility at the Oyu Tolgoi copper, gold, silver and molybdenum deposit, and supporting the company in adopting international transparency standards.

The Complainants argue that the network of roads, planned railroad and infrastructure associated with the projects formed part of their ‘area of influence’ and should therefore be subject to a vigorous appraisal of related social and environmental impacts, as well as robust due diligence and ongoing supervision by the EBRD. They allege, however, that the EBRD failed to adequately evaluate the full set of impacts associated with this transportation network on local herders’ livelihood and health. The Complainants also claim that the EBRD failed to identify the herders as indigenous peoples within the definition prescribed by the ESP 2008 and therefore failed to prevent and mitigate the impacts on their culture and

²⁶ PSD: www.ebrd.com/work-with-us/projects/psd/energy-resources-phase-ii.html

²⁷ PSD: www.ebrd.com/work-with-us/projects/psd/oyu-tolgoi-.html

²⁸ On 2 July 2013, 14 Mongolian herders and NGOs “OT Watch” and “Shuteen Gaviluut” submitted a Complaint dated 1 July 2013, to the PCM, with regard to the EBRD’s financing for the Ukhuaa Khudag coal mine, operated by Energy Resources LLC, and the nearby Oyu Tolgoi copper, gold and silver mine, operated by Oyu Tolgoi LLC. On 6 September 2013 PCM received further related Complaints (dated 5 August 2013) from five herders residing in Manlai *soum*, and four individual herders from Javkhiant *bagh* (one dated 28 July 2013 and three dated 9 August 2013). On 1 April 2014, “OT Watch” submitted a letter to the PCM that supplements the previous Complaints and provides additional information related to the request for a Compliance Review. All of the above Complaints constitute a ‘PCM Complaint’.

tradition. Further, they claim that the EBRD failed to ensure the development of salient prevention and mitigation measures and did not engage in sufficient due diligence and ongoing supervision of the impacts.

The impacts, they contend, include loss, fragmentation, and contamination of pastures, loss of access to quality water resources and the proliferation of dust and noise from the network of paved and unpaved roads. Complainants claim that these impacts cause degradation of their health and the well-being of the animals they depend on for their livelihood, their culture and traditional lifestyle. In addition, Complainants assert that the local affected population was not provided with a full understanding of the impacts of the mining operations and how these were being mitigated.

The Eligibility Assessment to determine eligibility for Compliance Review was completed by the PCM Expert Susan Wildau in December 2014,²⁹ finding the Complaint eligible for this function on both projects. During the Eligibility Assessment, PCM closely cooperated with the International Finance Corporation's Compliance Advisor Ombudsman ("CAO"), which also received a Complaint from local herders in relation to the Oyu Tolgoi project.

The Compliance Review is being conducted by the PCM Expert Dr Owen McIntyre.

The Complaint did not satisfy the PCM criteria for a Problem-solving Initiative for the **Energy Resources Phase II** project in accordance with PCM RPs 2009 because it did not meet the correct timing requirements.³⁰

Eligibility for a Problem-solving Initiative for the **Oyu Tolgoi** project will be addressed in a separate Eligibility Assessment Report, which is currently in progress and is being carried out by the PCM Expert Susan Wildau.

²⁹ See Eligibility Assessment and Annexes on the PCM Register: www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html

³⁰ In accordance with PCM RP 18b (ii): "... to be held eligible for a Problem-solving Initiative, the Complaint must be filed within 12 months following the last disbursement date of EBRD funds."

Monitoring³¹ on Complaints with findings of non-compliance

Boskov Most HPP³², Power and energy (project number 41979), FYR Macedonia

Ombra HPP³³, Power and energy (project number 42219), Croatia

Paravani HPP³⁴, Power and energy (project number 38940), Georgia

Environmental and social category: A (all projects)

Relevant EBRD Policy: Environmental and Social Policy 2008

On 1 January 2014, the PCM issued three Compliance Review Reports in respect of each of the above projects. In each, the respective PCM Expert (Glen Armstrong on Paravani HPP, Graham Cleverly on Ombra HPP and Dr Owen McIntyre on Boskov Most HPP) made findings of non-compliance in relation to Performance Requirement (“PR”) 6 of the ESP 2008. In addition, PCM Expert Glen Armstrong made a finding of non-compliance with PR 1 (in connection to non-compliance with PR6) and PR 10, in the Paravani HPP project.

In their Compliance Review reports, the PCM Experts made recommendations for addressing the findings of non-compliance at the level of EBRD systems or procedures, as well as in the scope or implementation of the projects. In response, the Bank’s Management prepared Management Action Plans (“MAP”) outlining respective timetables and an estimate of the human and financing resources required to implement these recommendations, where adopted.

PCM RP 47 (PCM RPs 2009) requires the PCM Officer to monitor the implementation of the recommendations and issue Compliance Review Monitoring Reports, at least biannually. In 2014 PCM prepared Monitoring Reports for each individual project based on the Management’s update in July 2014 and posted these on the PCM Register in November 2014. In preparation of the Reports, PCM also took into account feedback from the respective Complainants. The monitoring will continue in 2015 and until the PCM Officer determines that all implementation issues are concluded.

³¹ PCM RPs 2009 continue to apply to all PCM Complaints registered before 7 November 2014. According to PCM RP 44 (2009): “The PCM Officer will monitor the implementation of the recommendations of the Compliance Review Report subject to the timetable and estimate of human and financial resources as set in the Management Action Plan. The PCM Officer will issue Compliance Review Monitoring Reports at least biannually or until the PCM Officer determines that the implementation issues are concluded...”

³² **Boskov Most HPP**, EBRD finance €65 million, Client AD Elektrani na Makedonija, Project Board approval 8 November 2011, Complaints (2) registered 14 November 2011 and 10 January 2012, Compliance Review completed in 2013: finding of non-compliance. See PCM Register for PSD, history of the Complaint and the Compliance Review Monitoring Report: www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html

³³ **Ombra HPP**, EBRD finance €123.2 million, Client Hrvatska Elektroprivreda d.d., Project Board approval 22 November 2011, Complaint registered 24 November 2011, Compliance Review completed in 2013: finding of non-compliance. See PCM Register for PSD, history of the Complaint and the Compliance Review Monitoring Report: www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html

³⁴ **Paravani HPP**, EBRD finance US\$ 52 million loan and US\$ 5 million equity, Client Georgian Urban Energy, Project Board approval 14 June 2011, Complaint registered 4 January 2012, Compliance Review completed in 2013: finding of non-compliance. See PCM Register for PSD, history of the Complaint and the Compliance Review Monitoring Report: www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html

Complaints suspended for registration

In 2013, the PCM received six Complaints in relation to three projects, which were suspended for registration. The projects concerned had not yet reached the appropriate stage in the Bank's approval process or the Complainants did not previously attempt to bring their concerns to the attention of the Client or the relevant team(s) in the Bank. Therefore, in all of these cases, the decision on registration of the Complaints was suspended and the Complaints were forwarded to the relevant teams in the Bank for action.

In 2014 PCM kept in contact with the relevant Banking teams and the Environment and Sustainability department about the progress of these Complaints. One of the projects was cancelled and did not progress to the Board approval stage – the PCM Complaint was therefore closed.

Issues in the other project were resolved through site visits, engagement and dialogue conducted by the EBRD operations teams in meetings with the local community, including the Complainant. The Complaint was also subsequently closed in 2014, as the Complainants did not request further registration.

PCM continues monitoring the situation on the third project and is in continuous communication with the Banking team and the Environment and Sustainability department. PCM did not receive any further request for formal registration of this Complaint.

V. PCM EXPERTS

A roster of independent experts assists the PCM Officer in the review of Complaints. The PCM Experts serve as Eligibility Assessors, Compliance Review Experts or Problem-solving Experts, and may be responsible, on delegation by the PCM Officer, for any follow-up monitoring and reporting.

In 2014, three new PCM Experts were nominated, in accordance with the PCM RP 50 (PCM RPs 2014), by a Nomination Committee established by the EBRD President. The Committee, comprising five members, both internal and external to the Bank, solicited the nominations for the position of PCM Experts through a public and transparent process per the Bank's procurement rules applicable to consultants. Candidacies of three PCM Experts were recommended by the EBRD President for appointment by the EBRD Board of Directors in early 2015. The roster will therefore be represented by five PCM Experts.

PCM Experts since 2010

Dr Owen McIntyre teaches Law at University College Cork and has extensive experience of environmental law, policy and regulation at the national, European Union and international levels. He chairs the IUCN-WCEL Specialist Group on Water and Wetlands and sits on the Scientific Committee of the European Environment Agency. He publishes extensively in all areas of environmental and natural resources law and is a recognised authority on international water law. He has worked in several of the EBRD's countries of operations and is a member of a number of high-level advisory boards. He was appointed as an Expert for the EBRD's Independent Recourse Mechanism from 2004 to 2009.

Ms Susan T. Wildau, MA has worked in the field of complex, multi-party dispute resolution for over 30 years and is an internationally known mediator/facilitator, grievance mechanism developer, and trainer. She has provided conflict-management assistance to address a range of development, public policy, and environmental issues, working in more than 30 countries. Her projects focus on initiatives to prevent and address high stakes, natural resource conflicts that emerge when the interests of development, the natural environment, and societies collide. Her work with communities and companies aims to improve social and environmental performance, reduce risk, promote positive development impacts, and strengthen communities.

Newly nominated PCM Experts

Mr Albab Akanda has degrees in history and sociology from Dhaka University, and graduate degrees in public administration from Northeastern University and in regional planning from Harvard University. His development career covers the World Bank, International Monetary Fund and Asian Development Bank. He has also collaborated in different capacities with the African Development Bank, Islamic Development Bank, the International Fund for Agricultural Development, and a number of bilateral and inter-governmental, as well as United Nations agencies. His areas of specialisation include project management, environmental impact assessment and social development, primarily in the transport, agriculture, and energy sectors.

Dr Neil Popovic is a lawyer. He is currently a partner at Sheppard Mullin Richter and Hampton, where he chairs the law firm's International Arbitration Practice. He also serves as a lecturer at the University of California, Berkeley School of Law, where he teaches International Environmental Law and International Litigation and Arbitration. Dr Popovic has extensive experience of working on issues of human rights and environment, including impacts of large-scale infrastructure and development projects funded by IFIs. He has 27 years of professional experience, including law practice, writing, teaching and advocating for human rights and environmental protection.

Dr Maartje van Putten has extensive experience of working with accountability mechanisms of multilateral development banks, including World Bank Inspection Panel, African Development Bank Independent Review Mechanism and as an independent reviewer of the Asian Development Bank's Complaint Mechanism. She is at present an independent senior advisor to the Complaints Mechanism of the European Investment Bank and a member of the panel of the joint Netherlands Development Finance Company (FMO) and German Investment and Development Corporation (DEG) Complaint Mechanism and is the OECD National Contact Point for The Netherlands. Dr van Putten has authored a number of publications on the accountability of IFIs.

VI. COOPERATION WITH OTHER IFIs

Independent Accountability Mechanisms Network



PCM is a member of the IAMs Network – a network of accountability mechanisms of IFIs and international and national development institutions. The Network brings together a group of dedicated international practitioners and experts in accountability, compliance and corporate governance. Its purpose is to exchange knowledge and expertise and to cooperate to enhance the effectiveness of the work of citizen-driven accountability mechanisms. Membership in the IAMs Network is guided by a set of general principles, developed by its current member institutions.

In September 2014, PCM hosted the 11th Annual Meeting of the IAMs Network at the EBRD Headquarters in London. As in previous years, its members met to compare notes on a variety of topics. They discussed the recent reviews of the procedures of some accountability mechanisms, the lessons learned and the resulting changes to their operations. They also talked about the changing lending modalities and changes in the operations policies across the IFIs, exploring how these may impact the work of the IAMs. Further, the participants discussed how the introduction of new human rights standards in some institutions may affect the mandates of the accountability mechanisms. A separate, but related session focused on the policies on Indigenous Peoples and the establishment of common interpretative standards among the IAMs. Members also talked in depth about the different functions of their respective mechanisms and shared experiences of how these achieved their respective purposes of resolving problems in projects and improving IFIs' standards. Participants also talked at length about outreach and the continued efforts to ensure the accessibility of the accountability mechanisms to local communities and affected populations.

A number of practical plans and decisions were made as a result of the two-day meeting. In particular, the Network agreed on a number of joint outreach activities across the respective regions of operations of the IFIs. Also the members agreed an outline for the development and use of online platforms and social media for debating topical issues, consulting local communities and cooperating with other relevant groups.

Open Symposium on the Practice of Independent Accountability Mechanisms

In parallel with the IAMs Network Annual Meeting, PCM also hosted an Open Symposium on the Practice of Independent Accountability Mechanisms. The day-long programme consisted of three Specialist Sessions, each featuring formal presentations and an open discussion involving representatives of accountability mechanisms, multilateral development bank management, private sector banks, legal professionals, academics and civil society.

Session one looked into how IAMs can function to promote good governance standards. Representing the EBRD's PCM, Dr Owen McIntyre discussed the role of IAMs in supporting the "Global Administrative Law" phenomenon. Representing the UNECE/Aarhus Convention Compliance Committee, Fiona Marshall made a presentation on how environmental good governance may be measured and benchmarked. Karen Wendt, representing UniCredit Bank as the Head of its Equator Principles team explored the role of the Equator Principles and environmental, social and governance (ESG) standards in private sector banking.

Session two explored the "boundaries" of accountability in banking operations. Here a presentation by Dr Mara Tignino of the University of Geneva looked into the role of human rights standards. A presentation by Alessandra Masci of Amnesty International discussed remedial processes. Further a comparative analysis of IFIs' Access to Information policies was offered by Prof. Maeve McDonagh of the ADB Independent Appeals Panel - Public Communications Policy and a comparison of IFIs' accountability standards by Dr Susan Park of the University of Sydney.

The final session focused on the notion of a "community of practice" and the evolving practice of accountability. Here Dr Andria Naudé Fourie of the Erasmus University of Rotterdam looked into practical ways of constructing a 'practice database' maximising opportunities for learning and knowledge sharing. Suresh Nanwani of the ADB outlined ways



PCM Expert Dr Owen McIntyre



PCM Officer Anoush Begoyan Schliesing



in which IAMs may cooperate in pursuit of accountability. Further, Komala Ramachandra of Accountability Counsel discussed the role of civil society in developing a community of practice. Lastly, Vanessa Richard of Aix-en-Provence University made a presentation outlining the role of 'IAMs as Guardians of a Kaleidoscopic Legal Accountability'.

The open discussion accompanying each session consisted of an active debate on the role of independent accountability mechanisms in promoting environmental, social, human rights and good governance standards in banking operations. The programme gathered speakers and panellists with different backgrounds and perspectives, and the civil society representatives in attendance played a central role in stimulating and contributing to the discussions.

ANNEX I: PCM BUDGET

The EBRD provides budgetary resources to the PCM sufficient to allow all of the activities permitted by the PCM Rules of Procedure to be carried out. The PCM Officer, in consultation with the Chief Compliance Officer, prepares the annual budget indicating the level of resources required for the forecasted activities of the PCM for the coming year and is responsible for determining the allocation of resources.

The PCM budget was increased in 2014 to accommodate the recruitment of up to three additional PCM Experts, and to allow for the appointment of *ad hoc* experts, where required.

For 2015, the proposed level of expenditure will remain in line with that agreed for 2014. As in previous years, expenses over and above the amount budgeted for the PCM are expected to be met out of the Bank's management reserve fund.

ANNEX II: USEFUL RESOURCES AND LINKS

PCM Rules of Procedure

The PCM RPs set out the rules about how a Complaint may be filed and how it will be processed. They also set out the requirements relating to timelines, reports, disclosure of and access to information, training, outreach and other issues relevant to the administration of the PCM. The current PCM RPs were approved by the EBRD Board of Directors in May 2014 and came into force on 7 November 2014.³⁵ Complaints received before 7 November 2014 continue to be processed under the PCM RPs 2009.³⁶

Environmental and Social Policy

The ESP details the commitments of the Bank's Founding Agreement "to promote in the full range of its activities, environmentally sound and sustainable development" and guides the environmental and social appraisal, monitoring and stakeholder engagement in projects. The current **Environmental and Social Policy** was approved by the EBRD Board of Directors in May 2014 and came into force on 7 November 2014.³⁷ It applies to EBRD projects that pass Concept Review on or after 7 November. Previous editions of the Environmental and Social Policy apply to earlier projects.

Bank-financed projects are expected to meet good international practice related to sustainable development. To help clients and/or their projects achieve this, the EBRD has defined specific performance requirements for key areas of environmental and social issues and impacts:

- PR 1: Assessment and Management of Environmental and Social Impacts and Issues
- PR 2: Labour and Working Conditions
- PR 3: Resource Efficiency and Pollution Prevention and Control
- PR 4: Health and Safety
- PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement
- PR 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
- PR 7: Indigenous Peoples
- PR 8: Cultural Heritage
- PR 9: Financial Intermediaries
- PR 10: Information Disclosure and Stakeholder Engagement

Public Information Policy

The PIP sets out how the EBRD discloses information and consults with its stakeholders so as to promote better awareness and understanding of its strategies, policies and operations. The current Policy was approved by the EBRD Board of Directors in May 2014 and came into force on 7 November 2014.³⁸

³⁵ PCM RPs 2014 in a selection of languages: www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/about.html

³⁶ PCM RPs 2009: www.ebrd.com/downloads/integrity/pcmrules09.pdf

³⁷ ESP 2014 and earlier editions: www.ebrd.com/esp

³⁸ PIP 2014: www.ebrd.com/pip