



Project
Complaint
Mechanism

COMPLAINT: BEH Bond Issue and Kozloduy International Decommissioning Support Fund Projects

CASE NUMBER: 2017/09

PROBLEM-SOLVING COMPLETION REPORT – August 2020

Until 1 July 2020, [the Project Complaint Mechanism \(PCM\)](#) was the accountability mechanism of the EBRD. PCM independently reviews issues raised by individuals or organisations concerning Bank-financed Projects, believed to have caused, or be likely to cause harm. The purpose of the mechanism was to facilitate the resolution of social, environmental and public disclosure issues among Project stakeholders; to determine whether the Bank complied with its Environmental and Social Policy and the Project-specific provisions of its Access to Information Policy; and where applicable, to address any existing non-compliance with these policies, while preventing future non-compliance by the Bank. From 1 July 2020, the Independent Project Accountability Mechanism (IPAM) has replaced the PCM. For more information about IPAM, contact us at ipam@ebrd.com or visit the [IPAM webpage](#).

About this Report:

The BEH Bond Issue and Kozloduy International Decommissioning Support Fund Complaint was received in 2017 and its Problem Solving Initiative was undertaken between 2018 and July 2020 under the EBRD PCM in accordance with the 2014 PCM Rules of Procedure. As per the 2019 IPAM Policy’s Transition Provisions (Section V), all references in this report continue to refer to PCM.

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EXECUTIVE SUMMARY

In October 2017, the PCM received a [Complaint](#) related to the EBRD's [Bulgarian Energy Holding Bond Issue \(BEH\)](#) and the [Kozloduy International Decommissioning Support Fund \(KIDSF\)](#) in Bulgaria. The Complaint raised concerns regarding: (i) the resettlement process undertaken by Maritsa East Mines (**MME**, or the **Company**, a subsidiary of BEH and a Grant recipient under the KIDSF) in the village of Beli Bryag in Bulgaria; (ii) the adequacy of resettlement compensation; and (iii) impacts to the Project-affected households, agricultural cooperative and cemetery.

During the Complaint's Eligibility Assessment phase, the Complainants and the Company (together as **Parties**) jointly agreed to engage in a Problem-solving Initiative, participating in mediation through PCM's neutral and impartial platform and in an effort to resolve the issues raised in the Complaint. **The Parties requested that in order to facilitate opportunities for meaningful resolution, that activities and outcomes established within the confines of the Problem-Solving Initiative remain confidential, and therefore, this Completion Report presents a high-level summary of the mediation process.**

The PCM conducted Problem-solving from December 2017 to July 2020 during which period a total of 19 mediation meetings were held jointly and bilaterally with the Parties. The Problem-solving process was successful in facilitating the communication between Complainants and the Company and in increasing their understanding of their underlying interests and testing options to resolve the issues raised in the Complaint. Throughout the process, the Parties recognized better their specific needs relating to resettlement aspects; increased stakeholder engagement; improved their knowledge on the Resettlement Action Plan (RAP) and considered possible settlement agreements. As a result, from the approval of the RAP in June 2018, voluntary resettlement was achieved for 10 properties, of which 6 are private properties with dwellings, 1 house and 3 private land plots. The properties pending expropriation in Beli Bryag at the time of the completion of the Problem-solving are 28, of which 11 are private land plots and 17 private properties with dwellings.

The RAP indicated that if voluntary agreements were not reached by the end of December 2019, MME would initiate the expropriation process, which would make Problem Solving practically unfeasible. Thus, in July 2020, after two and a half years of engagement, the mediation process was concluded without a final settlement agreement between Parties. However, those households that resettled voluntarily during the mediation process signed bilateral agreements with the Company that evidence that the Problem-solving was helpful in strengthening the Parties' capacity to engage effectively and negotiate individual settlements. Due to the restrictions to travel and social gatherings brought about by COVID-19, PCM held closure teleconference calls and communicated via email with Parties to solicit feedback about the process, to discuss next steps and to consult on the content of the Problem-solving Completion Report.

Per paragraph 37 of the PCM Rules of Procedure, the Problem-solving is considered completed, as no further progress towards resolution of the dispute is deemed possible. This Problem-solving Completion Report describes the issues raised in the Complaint, gives an account of the dialogue process employed, the methods used to try to resolve the issues and outcomes achieved.

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Unless otherwise indicated capitalised terms used in this report are those as set forth in the PCM Rules of Procedure.

ACRONYMS/LIST OF DEFINITIONS

BEH	Bulgarian Energy Holding that has issued two bond issues to the benefit EBRD
Company/MME	Maritsa East Mines, a subsidiary of BEH and a Grant recipient under the KIDSF
CSO	Civil Society Organization
EBRD	European Bank for Reconstruction and Development
IPAM	Independent Project Accountability Mechanism
KIDSF	Kozloduy International Decommissioning Support Fund that is administered by the European Bank for Reconstruction and Development
PCM	Project Complaint Mechanism
Policy	PCM Rules of Procedure that governs PCM functioning
Problem-solving	Problem Solving process undertaken as one of PCM functions
RAP	Resettlement action plan is the plan that was approved by MME Board of Directors on 1 st of June 2018, this date becoming the official start date for RAP implementation

I. BACKGROUND

The Projects

BEH Bond Issue: The EBRD participated in two corporate bonds issued by the BEH in 2016 and 2018 to support electricity sector reforms in Bulgaria. The bond proceeds are reported to be isolated (both directly and indirectly) from the BEH subsidiaries involved in coal mining or coal-fired power generation. A subsidiary of the BEH is the MME, a 100% state-owned company, operating the largest open cast lignite coalfield in Bulgaria. With regard to the BEH Bonds, EBRD Management considers that they are not linked to the Beli Bryag resettlement undertaken by MME.

KIDSF: The KIDSF financed equipment replacement at MME. The KIDSF is administered by EBRD under a Framework Agreement between the Republic of Bulgaria and EBRD. The Project for bucket-wheel excavators replacement at MME is co-financed by KIDSF with Grant funds provided under a Grant Agreement concluded between MME as Grant Recipient and EBRD as Administrator of KIDSF. Through the grant, the Project aims to increase the security of supply and reduce the energy intensity of mining activities through the replacement of three aged and obsolete bucket-wheel excavators with a more efficient, new, bucket-wheel excavator, as well as purchase of a new excavator for the secondary removal of 50 million m³ overburden from the internal dump sites.

The Complaint

On 16 October 2017, the PCM received a Complaint related to EBRD's BEH Bond Issue and the KIDSF in Bulgaria regarding the operations of MME activities. The Complaint was submitted by two individuals, Evelin Tenev Petkov and Zhelyazko Zhelyazkov on behalf of the Beli Bryag Community supported by a regional CSO CEE Bankwatch and a local CSO Za Zemiata.

The Complainants voiced concerns regarding a range of existing and anticipated environmental, health, economic and social impacts of the Project due to the proximity of the mines basin operated by the MME and the necessity to resettle the entire village, namely:

- Alleged loss and damage to Beli Bryag's residents' properties, including houses, farm buildings, perennials and land;
- Damaged or demolished houses or farm buildings due to the proximity of the mine (500-600 m) and direct impacts caused by mine explosions;
- Economic loss and economic displacement of Beli Bryag's residents due to loss of cultivable agricultural land which previously served as a source of income;
- Health problems (respiratory diseases, depression and anxiety) due to the proximity of the mine and the background noise and vibrations resulting from mining activity;
- Insufficient compensation for Beli Bryag's residents' houses and land and loss of income from the agricultural land and adjoining gardens;

- Absence of a relocation plan for the Beli Bryag cemetery that falls within the boundary of the mine territory and lack of clarity regarding its relocation costs. Also, Complainants questioned whether the cemetery moving process would be done in accordance with Christian Orthodox religious rites; and
- Dwindling living conditions including rise in crime (theft) and lack of medical services in the village since 2005, when the village was abandoned by the municipal administration because of the initiation of the resettlement process.

The Complainants requested that a Problem-solving Initiative be undertaken by the PCM with reference to the expansion of MME and the required resettlement of the residents of Beli Bryag as a result thereof.

After confirming that good faith efforts to resolve the issues with the Bank and/or Client had already been undertaken, PCM registered the Complaint on 18 October 2017 and published it on the [PCM Register](#)¹ in [English](#).

II. ELIGIBILITY ASSESSMENT

From October - November 2017, PCM assessed the Complaint's eligibility to undergo a Problem Solving and/or a Compliance Review. Based on the eligibility criteria outlined in the 2014 PCM Rules of Procedure, PCM Expert Mr. Constantin-Adi Gavrila and PCM Officer Erica Bach jointly completed this assessment.²

As part of the assessment process, the Eligibility Assessors:

- completed an in-depth review of the Complaint, Project documents and further data provided by the Complainants, EBRD Management and the Client;
- held initial teleconference meetings with Complainants, the Client and Bank staff; and
- conducted in-country consultations individually with the Parties in November 2017.

Through this engagement, the Complainants and the Client confirmed their interest in having PCM provide a forum for facilitated dialogue, through which to discuss and seek to resolve the issues underlying the Complaint without attributing blame or fault. Simultaneously, the EBRD Management also supported the PCM Problem-solving initiative to help address the issues raised in the Complaint, in the form of an independent resettlement and social specialist.



Beli Bryag village

In November 2017, the PCM Eligibility Assessors found that the Complaint satisfied the criteria for a Problem-solving initiative as documented in the [Eligibility Assessment Report](#) published in the [PCM Register](#). The Problem-solving Expert Constantin-Adi Gavrila initiated the Problem-solving thereafter with the assistance of Albena Komitova, a local mediator from Bulgaria.

¹ From 1 July 2020, all PCM cases can be found at the [IPAM Registry](#).

² During the Eligibility Assessment process, the Eligibility Assessors do not judge the merits of the allegations in the Complaint and do not make a judgement regarding the truthfulness or correctness of the Complaint.

III. PROBLEM-SOLVING

Process Design and Framework Agreement

The PCM mediation team conducted the Problem-solving Initiative from December 2017 - July 2020.

In February 2018 the PCM mediation team facilitated the first joint mediation meeting with the Complainants and the Company to establish how the process would be organized, what issues would be discussed, the structure of meetings and the applicable ground rules to the process.



Mediation meeting in Radnevo municipality

Based on this the Parties concluded a Framework Agreement for the dialogue process regarding the Beli Bryag resettlement.

The issues discussed in the Problem-solving in pursuance to the signed Framework Agreement, included concerns brought to the attention of the PCM in the original Complaint. The scope of these concerns covered in principle all aspects of the resettlement of the village of Beli Bryag as per the RAP. More specifically, this included: (i) the methodology applied towards property valuation of Beli Bryag's land and dwellings and their full replacement value; (ii) housing, perennials and crops and the resulting compensation from its application; and (iii) restoration of residents' livelihoods, including matters related to the agricultural cooperative and the non-material damages claimed by Complainants as part of their resettlement. Discussions were also conducted on the issues related to the cemetery relocation – a matter that was subsequently confirmed to require the involvement of the Radnevo municipality.



Beli Bryag house to be demolished

In total, PCM conducted 19 mediation meetings as part of the Problem-solving Initiative and additional activities, namely:

- 5 joint meetings including representatives of the Company and the Community;
- 2 meetings of Parties' representative members of a working group to discuss issues related to the social package for resettlement and the cemetery reallocation; and
- 12 bilateral meetings held by PCM on-site with each of the Parties individually;
- Extensive communication conducted via email and video and teleconferencing; and
- 2 independent socio-economic surveys facilitated by PCM on Community members needs for resettlement to ensure that their interests are acknowledged in the process.

In September 2018, the initially appointed Problem-solving Expert Constantin-Adi Gavrilă and the local mediator Albena Komitova were replaced with a new Problem-solving Expert Julia Radanova, following a joint request from the Complainants and the Company. Julia Radanova's appointment was endorsed by the Parties and with the help of the PCM team she conducted the Problem-solving from September 2018 until its completion.

Negotiations on the Issues

As part of the Problem-solving process, the Parties discussed the following issues, namely:

- Full replacement values as part of the property valuation and the methodologies used to calculate the compensation due;
- Reallocation of Beli Bryag's residents and the social package applicable thereto;
- Cemetery reallocation;
- Agricultural cooperative.

Representatives of the MME indicated that, as stipulated in the RAP, the compensation amounts offered by the Company to Community members as compensation for their properties and loss of income would be determined by independent official property appraisers authorized to conduct property valuation and in line with the RAP. The Complainants shared their view that those amounts may not suffice to restore or, where possible, improve their livelihoods and standards of living to pre-displacement levels and that this would force them to find third party funding to finance their resettlement. Parties also engaged in extensive discussions on the diverse property



PCM meeting with the Community

appraisal methodologies (such as market based valuation and amortized restoration value) that could be applied, the various factors to be considered for the appraisal and the weighted criteria each methodology should bear. The Parties were able to agree that each property appraisal had to be based on the application of a minimum of two methodologies, but could not reach common understanding on the exclusion of depreciation from the methodologies used as a way of ensuring that the full property replacement value is achieved.

The PCM also facilitated meetings between Parties regarding the cemetery reallocation. Parties agreed that the Municipality of Radnevo is the principal authority in charge of the cemetery relocation and thus, they should be included in related discussions. Additionally, it was established that the cemetery resettlement is scheduled to take place after 2021 after the development of a cemetery resettlement action plan to cover all aspects of the cemetery reallocation.

The Parties further discussed the agricultural cooperative to establish that further information has to be provided from both parties to enable the calculation of the compensation due. In the course of the mediation process, no such information was gathered and hence, no agreement was possible on this item.

Based on the Complainants' request the Company provided template documents for voluntary resettlement that included property evaluation calculation methodology and additional social benefits as listed in the RAP. PCM supported Parties in working on the proposed templates, without being able to reach joint agreement on some of the terms included in those templates.

PCM supported Parties in the establishment of two working groups with even representation from each of them where they discussed: (a) the issues of the cemetery relocation and the social package offered by the Company and (b) property compensation. The two working groups met in May and November 2018 with the aim of jointly identifying other potential agreements on the cemetery relocation and the social package that could be implemented if endorsed by the Parties. The work undertaken was crucial in increasing Parties' understanding of their interests and ensuring there was an ongoing dialogue between the Complainants and the Company.

From January 2020, the Company initiated the expropriation process for the remaining properties in Beli Bryag. MME worked on a draft addendum to the RAP to describe the expropriation process and to be consulted with the Community with PCM's support. By the issuance of this Completion Report the draft addendum to the RAP had not been shared with PCM or the Community. During January – July 2020 the role of the PCM was to facilitate the discussions between the Company and the Community to increase the Community's understanding of the expropriation process, the social benefits associated with it and to facilitate any pending voluntary agreements for resettlement between the Company and individual households. Given that the addendum to the RAP on the expropriation was not made available during the process, no further discussions on the topic were possible.

Due to ongoing restrictions to travel and social gathering brought about by COVID-19 pandemic crisis since March 2020 onwards, additional on-site meetings could no longer be pursued by PCM but communications continued by telephone and email communications.

Despite the Parties' good intentions to find resolution to the issues raised in the Complaint, the outstanding community members from Beli Bryag had not yet chosen to resettle voluntarily at the time of the completion of the mediation process due to the number of outstanding issues on which no joint understanding had been achieved.

In view of this, and given that the expropriation as per the RAP had been initiated, PCM concluded that no further progress towards resolution of the dispute would be possible. Therefore, the Problem-solving initiative is considered completed.

IV. PROBLEM-SOLVING OUTCOMES

The Problem Solving function of the PCM establishes a role of impartial third party facilitator to assist the Parties reach mutually agreeable solutions to the concerns raised by complainants within a voluntary mediation process.

Results

Within the scope of the process, this Problem-solving initiative produced a number of results worthy of note:

- **The Problem-solving helped promote dialogue among the Parties.** The Community and the Company had multiple occasions to sit together, face-to-face, or via bilateral meetings and working groups facilitated by PCM to brainstorm and exchange views on issues of mutual concern, in a constructive environment, without attributing blame or fault.
- **Both Parties increased their understanding of the issues and appreciation for each other's viewpoints, interests and constraints.** The PCM missions to Beli Bryag were particularly effective in facilitating a common understanding of the problems and in some cases, a solution. Particularly relevant outcomes included the clear understanding by the Community of the resettlement process, its applicable rules and the opportunity of having Community queries answered so they could readily identify the options available to them.
- **Between 2010 (when the Company initiated the resettlement) and July 2020, the majority of the community members adhered to the voluntary program of compensation and were resettled by MME (172 of 212 properties, or 81.13%, including both uninhabited land plots, agricultural land and properties with dwellings).**
- Although it wasn't possible to resettle the entire Community voluntarily during the period of the PCM processing of the Complaint (October 2017 - July 2020), the improved

communication between Parties and understanding of the resettlement process facilitated by PCM assisted in the resolution of approximately 28 Company-Community members voluntary resettlement agreements.

- Finally, Community members were able to undertake a case-by-case negotiation process with the Company, facilitated by the PCM Expert, in an attempt to resolve particular concerns encountered by Community members.

Outstanding issues

As much as the Problem-solving Initiative was helpful in increasing Parties' capacity for effective engagement, obstacles preventing a jointly acceptable solution for Parties include:

- The lack of accord on the calculation methodology of compensation amounts for properties and moral damages payable to residents which resulted in an deadlock on this question and prevented the Parties from reaching a settlement;
- Company-faced public sector legislative constraints to cover non-monetary damages claimed by residents;
- Differences in the legal interpretation on some of the provisions of the applicable national legal framework;
- Complainants' shared perspective that EBRD Environmental and Social Policy is not complied with in the course of the resettlement of Beli Bryag;
- Lack of participation of all decision-makers relevant for resolving some of the issues raised in the process;
- Some of the proposals identified during the Problem solving initiative fell outside the jurisdiction of the Company and required approval from authorities. Due to the voluntary nature of the mediation process, advancing on these aspects was not possible and hence, those issues remained without a resolution.

V. CONCLUSION

It is the opinion of the Problem-solving Expert that no further progress towards the resolution of the dispute is possible; therefore, PCM has closed the case. Given the closure of the case under paragraph 37 of the PCM Rules of Procedure, the Problem-solving Expert does not identify the need for any follow-up monitoring or reporting.

This Problem-solving Completion Report will be circulated for information to all relevant Parties, the EBRD President and the EBRD Board of Directors, and will be publicly released and posted on the IPAM Case Registry in English and Bulgarian.