

PUBLIC



Project
Complaint
Mechanism

KRNOVO WIND FARM

REQUEST NUMBER: 2017/01

COMPLIANCE REVIEW REPORT – March 2018

PUBLIC

The Project Complaint Mechanism (PCM) is the independent accountability mechanism of the EBRD. PCM provides an opportunity for an independent review of complaints from one or more individual(s) or organisation(s) concerning an EBRD project, which allegedly has caused, or is likely to cause harm. PCM may address Complaints through two functions: Compliance Review, which seeks to determine whether or not the EBRD has complied with its Environmental and Social Policy and/or the project-specific provisions of the Public Information Policy; and Problem-solving, 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. Affected parties can request one or both of these functions.

For more information about PCM, contact us or visit www.ebrd.com.

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How to submit a complaint to the PCM

Complaints about the environmental and social performance of the EBRD can be submitted by email, telephone or in writing at the above address, or via the online form at:

<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/submit-a-complaint.html>

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NOTE: Unless otherwise defined, capitalised terms used in this Compliance Review Report refer to terms as defined in the PCM Rules of Procedure.

Executive Summary

On 7 August 2015, the Project Complaint Mechanism (PCM) received a complaint relating to EBRD's financing of the Krnovo Wind Farm Project (the Project) from an individual who requested that his identity be kept confidential (the Complainant). The registration of the complaint was suspended between August 2015 and February 2017 to allow the Complainant to reach out to the client and the Bank and give them an opportunity to address the issues raised. The complaint was resubmitted on 2 March 2017 and registered by the PCM Officer on 6 March 2017 in accordance with paragraphs 11-13 of the PCM Rules of Procedure (PCM RPs) (the Complaint). It was subsequently posted in the PCM Register, pursuant to paragraph 20 of the PCM RPs. The Complainant requested both a Problem-Solving Initiative (PSI) and a Compliance Review. On 7 March 2017, the Eligibility Assessor was appointed to conduct an Eligibility Assessment jointly with the PCM Officer, in accordance with paragraph 22 of the PCM RPs. The Bank formally responded to the Complaint on 1 April 2017 and the Client on 2 May 2017. The Eligibility Assessment Report for Compliance Review (EAR), which was released on 31 July 2017, concluded that the Complaint was eligible for a Compliance Review.

The Complaint alleges that the expropriation process related to the Project failed to comply with the EBRD 2014 Environmental and Social Policy (ESP), in particular, Performance Requirement (PR) 5. The Complainant considers that he was never consulted prior to his land being expropriated, and that the expropriation process failed to include proper negotiation, to provide compensation according to market value, and to recognise the damages done to his land and its value. In addition, the Complainant considers that the expropriated area includes only a small portion of the actual land that will be used by the Project, and that ownership controversies related to the Complainant's land should have been resolved before continuing with the Project's works. Finally, the Complainant alleges that the grievance mechanism for the Project was unavailable and he could not find it online.

The Compliance Review Expert considers that according to PCM RP 41, the objective of the compliance review is to *"establish if (and if so, how and why), any EBRD action, or failure to act, in respect of an approved Project has resulted in non-compliance with a Relevant EBRD policy [...]"*. Consequently, the focus of the analysis of compliance is the conduct of EBRD, and in particular, the determination of whether the environmental and social appraisal of the Project and the subsequent monitoring met the requirements of the 2014 ESP with the view to ensure the Client's compliance with PR5. **This Compliance Review has determined that the Bank has complied with its obligations under the 2014 ESP.**

Part I: The Facts

1. Factual background

On 6 May 2015, EBRD Board of Directors approved a EUR 48.5 million senior loan facility to Krnovo Green Energy (the Client or KGE), a special purpose vehicle created for the sole purpose of the construction and operation of the Project and jointly owned by Ivicom Holding and Akuo Energy.¹

The Project consists of the construction and operation of a 72MW wind farm development at Krnovo, located approximately 28 kilometres Northeast of the city of Nikšić, the second largest city in Montenegro. The Project consists of 26 wind turbine generators, as well as the construction of two overhead transmission lines, two new substations and related infrastructure, such as access roads. The Project is expected to be Montenegro's first utility-scale wind farm and to contribute to Montenegro's efforts to become one of the lowest carbon economies in Europe on a relative basis.

The Project was first considered for financing by the Bank in 2012 and was initially categorised A under the 2008 ESP, for potential environmental and social risks. After the due diligence carried out in 2013 by an independent consultant (the Consultant), the Project was re-categorised B as no social or environmental risks were identified that triggered its classification as category A. The Project became inactive for a while and was reactivated in 2015. Subsequently, the Project was reassessed under the newly applicable 2014 ESP and a number of gaps were identified to meet the 2014 ESP. The gaps were allegedly closed before the Project was submitted for Board approval. The Environmental and Social Action Plan (ESAP) prepared by the Consultant in 2013 was considered to be still fit for purpose in 2015 and it was included in the loan agreement. The Consultant undertook the monitoring of the Project on a monthly basis for technical and health and safety issues, and on the lenders' requests, for environmental and social aspects. The Project is now in operation.²

The Complainant first contacted the PCM on 7 August 2015 via email to submit a complaint relating to the expropriation process carried out as part of the Project. On 21 August 2015, the PCM informed the Complainant that since he had not been in touch with the Bank Management or the Client prior to registering the Complaint, the Complaint would be suspended to allow the Bank and the Client the opportunity to address the issues raised by the Complainant. Between August 2015 and February 2017, numerous exchanges took place between the Complainant, the Bank Management and the Client.

In February 2017, the Complainant informed the PCM that after 18 months of communication with the Bank and the Client, the issues initially raised in his Complaint remained unresolved. On 2 March 2017, the Complainant submitted a revised Complaint requesting both a PSI and a Compliance Review. The Complainant requested that his name be kept confidential. The Complaint was registered by the PCM Officer on 6 March 2017 in accordance with paragraphs

¹ Akuo Energy was also identified as the "Project Sponsor." The Bank Management and the Complainant referred indistinctively to the Project Sponsor and the Client.

² The webpage of the Project sponsor indicates that the Krnovo wind farm is in operation. See <http://www.akuoenergy.com/en/krnovo> (last accessed on 18 February 2018).

11-13 of the PCM RPs, and was subsequently posted in the PCM Register, pursuant to paragraph 20 of the PCM RPs.

On 7 March 2017 Ms Susan T. Wildau was appointed as Eligibility Assessor to conduct an Eligibility Assessment jointly with the PCM Officer, in accordance with paragraph 22 of the PCM RPs. The Bank responded formally to the Complaint on 1 April 2017 and the Client submitted its response on 2 May 2017. The EAR was published on 31 July 2017.³ The PCM Eligibility Assessor determined that the Complaint was eligible for a compliance review and terms of reference (ToRs) for that review were included in the EAR. The PCM Officer appointed PCM Expert Andrea Saldarriaga as Compliance Review Expert.

2. The Parties

- **The Complainant:** Confidential
- **The Bank:** European Bank for Reconstruction and Development
- **The Client:** Krnovo Green Energy

3. The Project

The Krnovo Wind Farm project, a 72MW wind power plant at Krnovo for which the Bank provided a senior loan of EUR 48.5 million.

4. The Complaint

The Complaint relates to the expropriation process conducted to acquire the land necessary for developing the Project. According to the Complainant, this process failed to comply with the EBRD 2014 ESP, in particular, PR 5. The Complainant raises a number of issues in connection with the expropriation process.

The first ground of complaint refers to the **negotiation, consultation and compensation** for the expropriated land. The Complainant alleges that he had no involvement in defining the conditions of the expropriation of his land. He was never consulted about the works to be carried out or the compensation for the land. According to the Complainant:

Project Sponsor did not try to acquire land rights through negotiation but through expropriation which is not in compliance with EBRD Environmental and Social Policy. Project Sponsor did not contact me until I reached out to EBRD.⁴

The Complainant explains that the first time he learned about the expropriation was in May 2013 when he was invited by the Real Estate Agency of Montenegro (REA) to a meeting where he was offered 0,50€/m² for 426m² of the land owned by him and his family members. He rejected this offer as he considered that it was well below the market value. He noted that the amount of 0,50€/m² is “at least 10 times less than the fair value.” Later, on 2 June 2013, he received a decision of expropriation where the terms of the offer were confirmed. The Complainant appealed this decision and his appeal was rejected. The case was then referred to the competent court.

³ The EAR can be accessed at <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html>.

⁴ Complaint, Annex 1 to the EAR, p. 14.

On 27 November 2014, a valuation expert appointed by the basic court in Žabljak determined that the market value for the expropriated land was 4,31€/m².⁵ The Court later reviewed this value and decided on 5 July 2017 that the market value was of 3,23€/m².⁶ According to the Complainant, both he and the Client challenged this decision. The Client insisted that the value of the land was 0,50€/m² and the Complainant sought that the market value be recognised. For that purposes, the Complainant had arranged for another assessment by an independent valuation expert that determined in November 2017 that the market value of his land was 5,60€/m².⁷ On 18 December 2017, the high court of Bijelo Polje confirmed the decision of 5 July 2017 by the basic court of Žabljak establishing that the market value of the expropriated land was 3,23€/m².⁸

During the time the case was before the local courts, the Complainant alleged that he sought to find an agreement with the Client over the disputed value of the land. While the Client and the Complainant were in contact during that period, the Complainant indicated that the Client refused to engage in negotiations, alleging that to do so it was necessary that the court proceedings relating to the Complainant's claims were "open". Since court proceedings were allegedly suspended, the Client indicated the impossibility to find a negotiated solution.

The second ground of complaint refers to the **scope of the decision on expropriation**. The Complainant contends that the decision on expropriation only covers a small portion of his land where the towers for the Project will be built and that it fails to include "the area under the power wires and adjacent area that will be unusable completely for security reasons." Given the resulting drop in value of the remaining part of his land, the Complainant stated that he wants the entire parcel of 21,000m² to be expropriated. He noted, however, that the ownership of 5,000 m² of this 21,000m² was wrongly registered by the Cadastre and is being claimed by a neighbour. The Complainant argues that the Client should have waited for the resolution of the controversy over the ownership of part of his land before continuing with the Project works. The Complainant specifically notes:

Project Sponsor ignored the fact that around 25% of the area from my ownership paper is not adequately represented in Cadastre's map and did not wait for the issue to be resolved. Moreover, Project Sponsor did not recognize the damage done to my land as a whole and its future value by changing its structure and putting limits to construction of objects.⁹

The third ground of complaint refers to the **grievance mechanism** for the Project. In discussions during the Eligibility Assessment phase¹⁰ and with the Compliance Review Expert, the Complainant alleged that there was no grievance mechanism available to file a complaint with the Client. In particular, no grievance mechanism was available on the website of the Client. It is

⁵ Expert's appraisal for the basic court in Žabljak, 27 November 2014. Document provided by the Complainant and not publicly available.

⁶ Decision of the basic court in Žabljak, 5 June 2017. Document provided by the Complainant and not publicly available.

⁷ Independent expert's appraisal, November 2017. Document provided by the Complainant and not publicly available.

⁸ Decision of the high court of Bijelo Polje, 18 December 2017. Document provided by the Complainant and not publicly available.

⁹ Ibid.

¹⁰ EAR, p. 6.

for this reason that the Complainant decided to reach out to EBRD and file a Complaint with the PCM. The Complainant further explained that after receiving the contact details of the Project Sponsor from EBRD, he contacted the Project Sponsor's representatives in Montenegro. After meeting with them several times, the Complainant summarises the response of the Project Sponsor in the following terms: *"The issue can be resolved by Montenegrin institutions and courts."*¹¹

Finally, by submitting the Complaint to the PCM the Complainant *"hope[s] that the Project Sponsor will compensate [me] adequately for the harm caused by the project."*¹²

Part II: Steps Taken to Conduct the Compliance Review

1. **Document review:** given the nature of the Complaint, the Compliance Review Expert conducted a limited document review. Documents are referenced throughout the Compliance Review Report. The nature of the document or source of communication is also mentioned for the benefit of the readers indicating that the documents or communications referenced are not available for public review.
2. **Meetings with the Parties:** the Compliance Review Expert met via conference call with the Bank's Environmental and Sustainability Department (ESD) on 31 October 2017; with the Complainant on 30 October 2017; and with the Client on 8 November 2017. A representative of the PCM was present in all conference calls.
3. **Site visit:** the Compliance Review Expert did not find it necessary to conduct a site visit as it was not relevant to the issues alleged in the Complaint.
4. **Opportunity to comment on the Draft Compliance Review Report:** in accordance with 2014 PCM RP 42, the Compliance Review Expert gave the parties the opportunity to provide comments on the Draft Compliance Review Report.

The Compliance Review Expert is of the opinion that she has had access to sufficient information to consider the Bank's alleged non-compliance with the requirements of the 2014 ESP.

According to 2014 PCM RP 41, the objective of this Compliance Review will be to determine (and if so, determine how and why), the Bank's conduct with respect to the Project has resulted in non-compliance with a Relevant Bank Policy, as defined in the 2014 PCM RPs. If non-compliance is found, the Compliance Review will recommend remedial changes in accordance with 2014 PCM RP 44.

The next part of this Compliance Review report will address the allegations identified in the EAR and detailed in the ToRs of the EAR.

Part III: Discussion of the Issues and Analysis of Compliance

The ToRs identified the main question for the Compliance Review as follows:

¹¹ Complaint, Annex 1 to the EAR, p. 15.

¹² Ibid.

Did EBRD satisfy its obligations in relation to the environment and social due diligence relating to Performance Requirement 5, and did the Bank adequately monitor Client commitments as determined pursuant to the ESDD?

This section of the compliance report will therefore address the question identified by the TORs.

1. Parties' positions

1.1.1 The Complainant's position

The Complainant claims that the expropriation process failed to comply with the EBRD 2014 ESP, in particular, PR5. The grounds upon which the Complainant based its complaint have been explained in section 4 of Part II of this compliance report.

1.1.2 The Bank's response

The Bank's Management submitted its response to the PCM on 1 April 2017 and provided additional information in subsequent exchanges with the PCM and the Compliance Review Expert, in particular, during the conference call of 31 October 2017.

According to the Bank Management, the Project was structured to comply with the requirements under the 2014 ESP applicable to category B projects and with PR5. In particular, the Bank Management noted:

EBRD has structured the project fully in line with its Environmental and Social Policy (ESP) and its Performance Requirements. In particular, all provisions of the PR5 have been met.¹³

The Bank Management explained that the Project was first considered by the Bank in 2012 and ESD carried out a visit to the site Project in December 2012. The Project was initially categorised A under the 2008 ESP because of its potential social and environmental risks.

An independent consultant (the Consultant) was appointed by the Bank to conduct an environmental and social due diligence in 2013. Following this assessment, the Project was re-categorised B as the Consultant indicated that the environmental and social impacts were not significant and could be addressed through readily available management and mitigation techniques.¹⁴ The Consultant further indicated that "*the Real Estate Administration is carrying out expropriation in line with EBRD PR5*" and that "*the Project is considered to be in compliance with EBRD PR5 and the development of the [Land Acquisition and Compensation Plan] LACP will not be necessary.*"¹⁵

The Project became inactive for a period of time while the developer dealt with a number of issues unrelated to social or environmental impacts. The Project was reactivated in 2015 and was resubmitted for consideration, this time under the ESP 2014 that had by this time entered into force. During the review under ESP 2014, a number of gaps were identified. According to the

¹³ Bank Management Response, Annex 2 to the EAR, p. 16.

¹⁴ Email dated 17 July 2017 from ESD to PCM. Not publicly available.

¹⁵ Ibid.

Bank Management, these gaps were closed before the submission of the Project to the Board for approval.¹⁶

The Environmental and Social Action Plan (ESAP) agreed on 2013 was considered as being still fit for purpose and it was therefore included in the financing agreement. The Project was subsequently approved by the EBRD Board in May 2015 and the Agreement signed in July 2015.¹⁷

With respect to the monitoring, the Bank Management indicated that the Bank “has been closely monitoring the Project with [the] help of [an] independent consultant both during preparation and implementation phase[s].”¹⁸ In particular, the Bank noted that the Consultant was instructed to monitor the Project on a monthly basis, including for environmental and social issues, on behalf of the lenders (which in addition to EBRD, included KfW and Proparco).

In addition, ESD monitored the Project through site visits. The first visit was conducted in November 2015 by an ESD environmental and social specialist and coincided with the first complaint raised by the Complainant. In this regard, ESD met with the Complainant and the Client. ESD asked the Consultant to closely monitor the Complainant’s case and provide a regular update to ESD. Following the second site visit by the Consultant in May 2016, ESD required the Consultant to provide an assessment of the compliance of the land acquisition process against PR5. The Consultant submitted the report in June 2016 in which it stated that the expropriation process was compliant with EBRD PR5. ESD kept monitoring the case and received monthly reports from the Consultant on the exchanges between the Complainant and the Client until September 2016.¹⁹

With respect to the specific allegations of the Complainant, the Bank Management indicated that the Project Sponsor made significant efforts to “try to resolve the issue amicably” and that it was “willing to follow all judicial and formal administrative process to resolve the issue.”²⁰ In addition, the Bank Management considered that compensation was compliant with the requirements under PR5. In particular, the Bank Management noted:

In accordance with the PR 5, the loss of assets resulting from the construction of the transmission line has been compensated through payment for the land, and not for the entire land plot, at a replacement value. [...]

An independent consultant confirmed that the process followed was fully compliant with PR5 and EBRD’s ESP and the compensation offered to the affected people was in line with the requirements of PR5. [...]

EBRD’s policies as well as good international practice does not require the compensation of an entire plot of land affected by a 110kV line construction, nor does it require the compensation for the land under the transmission line.²¹

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Email dated 17 July 2017 from ESD to PCM. Not publicly available.

²⁰ Bank Management Response, Annex 2 to the EAR, pp. 16.

²¹ Ibid.

Finally, regarding the allegations on the absence of a grievance mechanism, the Bank Management argued that the June 2016 report indicated that the grievance mechanism of the Client was compliant with PR5.²²

1.1.3. The Client's response

The Client submitted its response to the PCM on 2 May 2017 and provided additional information in subsequent exchanges with the PCM and the Compliance Review Expert, in particular, during the conference call of 8 November 2017. The Client responded to the Complaint closely following the grounds raised by the Complainant.

First, the **“negotiation of land rights.”** According to the Client, the expropriation process started in 2010 and it was the responsibility of the Republic of Montenegro as the Project was considered of public interest. The process was conducted by the Ministry of Economy through the Real Estate Agency. The expropriation process was regulated by the Montenegrin Law on Expropriation.

The Client further noted in its response that “[a] compensation price was allocated to each former owner (based on experts’ determination).”²³ The Client also explained that they “did not have to conduct any public meetings in regards to land since it was not [their] scope of work.”²⁴

The Client also indicated that some owners accepted the compensation and received it. However, other owners rejected the compensation offered and their cases were sent to the competent court. The Client then decided to hire a lawyer to request the authorisation of the court to negotiate with the former owners the compensation for their land outside the court process to avoid delays. The authorisation was granted and the Client started to negotiate individually with each former owner.

According to the Client, the Complainant decided to “stop” his court case because of his claim over the amount of land covered by the expropriation decision and the controversy over the registration of the ownership of his land with the Cadastre. The Client alleged that because the court case was “not opened”, the Client’s lawyer was “unable” to negotiate with the Complainant. The Client explained:

*His court case not being opened, our lawyer was unable to negotiate with him. The negotiation through the Court was of course not possible either, as the court case was closed by the Complainant. This was explained to him during several meetings with our CLO, and even with the broader project team and the Bank’s E&S advisor. It was also written down and sent to him by email [...]*²⁵

Second, the **“amount of land expropriated.”** On this issue, the Client provided the following explanation:

²² Memo on current status of expropriation process on the Krnovo wind farm project, June 2016, p.8. Not publicly available.

²³ Client Response, Annex 3 to the EAR, p. 18.

²⁴ Ibid.

²⁵ Ibid.

The land expropriated on the Complainant parcel comprised the tower footing of the overhead line, as it is common practice in Montenegro. Hence, we have indeed offered to compensate on the area where the towers will be built. However, the line being transferred at operation start to CGES, we need to comply with their compensation guidelines in order to be fair throughout the whole country. As they don't pay easement right to anyone in Montenegro (i.e. compensation for line passing over the parcel), we couldn't create a precedent by compensating those same easements on Krnovo site.²⁶

Third, the “**cadastre issues.**” The Client explained that the problem with this issue is that the “*Cadastre didn't recognize the Complainant as owner of a part of the land he claims owning.*”²⁷ According to the Client, this is an issue that is not for the Client to decide but for the Cadastre, and this process, the Client notes, “*can be a lengthy process in Montenegro.*”²⁸ The Client indicated that they had offered the Complainant several times help with resolving the issues with the Cadastre, but that this is “*not a process that KGE can undertake alone (we can only try to fast-track it with the contacts we have at the Cadastre).*”²⁹ The Client further notes that it is its understanding that the cadastre issue was one of the reasons for the Complainant to “stop” his court case.

Finally, during the conference call with the Compliance Review Expert, the Client indicated that they had established a **grievance mechanism** and that information on the mechanism was provided in flyers that were left in public places and restaurants. The Client also noted that the grievance mechanism was accessible for a while on their website but that it was no longer available.

1.2. The Bank's policy obligations

According to Article 4 of the 2014 ESP, “[a]ll projects financed by the EBRD shall be structured to meet the requirements of this Policy.” In order to help clients and their projects comply with the requirements of the 2014 ESP and ensure that projects are designed and operated in compliance with Good International Practices (GIP) relating to sustainable development, EBRD has defined ten performance requirements (PRs) covering the key areas of environmental and social issues and impacts.³⁰ Article 5 of the 2014 ESP further provides that

The EBRD has adopted a comprehensive set of Performance Requirements (PRs) that projects are expected to meet. The Bank expects its clients to manage the environmental and social issues associated with the projects to meet the PRs over a reasonable period of time.

In addition, Article 6 of the 2014 ESP provides that EBRD

[...] will seek within its mandate to ensure through its environmental and social appraisal and monitoring processes that projects are designed, implemented and operated in compliance with applicable regulatory requirements and good international practice (GIP).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ See Article 36 2014 ESP and EBRD's description of PRs available at <http://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html>

Thus as part of its commitments under Articles 4 and 6, the Bank should seek to ensure that PRs are met by clients. To do so, the Bank needs to observe the requirements of the environmental and social appraisal and the monitoring process as enshrined in the 2014 ESP. Notably, Article 29 provides that “[t]he [environmental and social] appraisal will assess whether the project is capable of being implemented in accordance with this Policy and its PRs” and Article 30 indicates that a key consideration included in the EBRD’s environmental and social appraisal is “the capacity and commitment of the client to implement the project in accordance with the relevant PRs.” Article 33 provides that in cases when the EBRD considers financing a project that is under construction or where the project has received its permits from the host country, the Bank’s appraisal “will include a gap analysis of the project design and implementation against the PRs to identify whether any additional studies and/or mitigation measures are required to meet the EBRD’s requirements.” Compliance with all applicable PRs should also become part of the legal documentation of an agreement. According to Article 42 “[t]he EBRD’s financing agreements with clients in respect of a project will include specific provisions reflecting the EBRD’s environmental and social requirements. These include compliance with all applicable PRs [...].”

Finally, monitoring compliance with the PRs falls under the Bank’s commitment in Article 45 to

[...] review[s] the environmental and social performance of projects and the compliance with the environmental and social commitments as agreed in the legal documentation. The extent of monitoring will be commensurate with the environmental and social impacts and issues associated with the project [...]

Compliance with the PRs is therefore an obligation of the client and it is for the Bank to seek that the client complies with the PRs through (i) the appropriate environmental and social appraisal of the project and (ii) adequate monitoring in accordance with the requirements of the 2014 ESP. **The question then for the compliance review in this case is whether the environmental and social appraisal conducted by the Bank as well as the monitoring undertaken by the Bank were adequate to meet the requirements listed above under the 2014 ESP in order to ensure the Client’s compliance with the relevant PRs.** In the case under examination, both the Bank and the Complainant identify PR5 as the applicable PR to the Project. PR10 is also relevant for analysing the Complaint as referred by PR5.

Before moving to the analysis of compliance, it is necessary for this Report to provide a brief account of the essential elements of PR5 and PR10 as relevant for the compliance analysis.

PR5 relates to “land acquisition, involuntary resettlement and economic displacement.” It refers to a diversity of situations defined as involuntary resettlement that includes both physical and economic displacement. The relevant aspects of this PR for the case at hand include:

- **Objectives (PR5.5):** the objectives of the PR are to [...] mitigate adverse social and economic impacts from land acquisition or restrictions of affected persons’ use of and access to assets and land by: (i) providing compensation for loss of assets at replacement costs. Footnote 7 to this PR5.5 clarifies that the replacement value is usually calculated as the market value of the assets plus the transaction costs related to restoring those assets. Footnote 7 further notes that the calculation of replacement costs is complex due to the potential variety of land, land use claimants, and the differing levels of land market development across member countries.

- **Scope of application (PR5.6):** the PR applies to physical or economic displacement, that can be full, partial, permanent, or temporary, resulting from the following type of transactions: land rights or land use rights for a project acquired through expropriation or other compulsory proceedings [...]
- **Requirements (PR5.10):** clients are encouraged to acquire land rights through negotiated settlements even if they have the legal means to gain access to the land without consent of the seller. Negotiated settlements help avoid expropriation [...]
- **Consultation (PR5.12):** the client should involve affected men and women from the earliest stages and through all resettlement activities. This will facilitate their early and informed participation in decision-making processes related to resettlement, and in PR10: affected persons shall be given the opportunity to participate in the eligibility requirements, negotiation of the compensation packages, resettlement assistance [...]
- **Socio-economic assessment and census (PR5.14):** the client will carry out a socio-economic baseline assessment on people affected by the project, including impacts related to land acquisition and restrictions on land use.
- **Grievance mechanism (PR5.21):** the client will establish an effective grievance mechanism as early as possible in the process. It will be consistent with this PR and with the objectives and principles of PR10 in order to receive and address in a timely fashion specific concerns about compensation [...] It will include a recourse mechanism designed to resolve disputes in an impartial manner.
- **Private sector responsibilities under government-managed resettlement (PR5.41):** there may be cases where the land acquisition and resettlement are the responsibility of the host government. In such cases, the client will collaborate, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this PR [...] The client will prepare a plan (or a framework) that together with the documents prepared by the responsible government agency, will meet the requirements of this PR. The client may need to include in its plan: (i) a description of the entitlements of displaced persons provided under applicable laws and regulations; (ii) the measures proposed to bridge any gaps between such entitlements and the requirements of this PR; and (iii) the financial and implementation responsibilities of the government agency and/or the client.

PR 10 recognises the importance of an open and transparent engagement between the client and all stakeholders, including the communities affected by the project. This stakeholder engagement is an ongoing process that involves: (i) public disclosure of appropriate information; (ii) meaningful consultation with stakeholders; (iii) and effective procedure or mechanism by which people can make comments or raise grievances (PR10.2). With respect to the grievance mechanism, PR10.28 indicates the need for the client to establish a mechanism, process or procedure to receive and facilitate the resolution of stakeholders' concern and grievances, in particular about the client's environmental and social performance. The grievance mechanism should be scaled to the risks and potential adverse impacts of the project. PR10.28 provides further details for the appropriate establishment of the mechanism.

1.3. Analysis of compliance

The Compliance Review Expert would like to begin by reminding that according to PCM RP 41, the objective of the compliance review is to “*establish if (and if so, how and why), any EBRD action, or failure to act, in respect of an approved Project has resulted in non-compliance with a Relevant EBRD policy [...]*”. Consequently, the focus of the analysis of compliance is the conduct

of EBRD, and in particular, the determination of whether the environmental and social appraisal of the Project and the subsequent monitoring met the requirements of the 2014 ESP with the view to ensure the Client's compliance with PR5.

1.3.1. Environmental and social appraisal of the Project

1.3.1.1. Analysis

As explained by the Bank Management, the initial appraisal of the Project included a site visit by the ESD team in December 2012 and an environmental and social due diligence that was carried out by the Consultant in July 2013 (the ESDD). An ESAP was prepared in conjunction with the ESDD to address the shortfalls in social management and monitoring identified in the due diligence.³¹ The Project was subsequently reassessed in 2015 under the 2014 ESP and the ESAP agreed in 2013 was considered to still be fit for purpose and it was included in the loan agreement.³²

The ESDD report was prepared using the information provided during the desk review, a site visit and further discussion with the companies in charge of the Project and other stakeholders. The site visit was conducted in March 2013 by an ESDD team consisting of a social specialist and an international environmental specialist from the UK, and two social and resettlement specialists from Serbia. During the visit, the ESDD team met with relevant stakeholders including local authorities, a local NGO and other organisations with expertise or interest in the Project. In particular, the ESDD team met with the land acquisition and resettlement committees for Nikšić and Šavnik municipality, and an affected land owner.³³

The ESDD report included, among other elements, a national and international legislative framework with a gap analysis and a scoping of economic displacement activities and the determination of the need for a Land Acquisition and Compensation Plan (LACP).³⁴ The report noted that the Expropriation Law of Montenegro (Official Gazette of Montenegro No. 55/00 and 12/02) regulated the issues relating to land acquisition in the public interest. In accordance with the Law, it noted that KGE signed an 'Agreement on Land Lease and Construction of the Wind Power Plant with the Government of Montenegro' on 5 August 2010 and an Annex on 26 October 2012. As such, it noted that the expropriation process was to be conducted by the government (in particular the REA), with the costs of acquired land to be covered by KGE. The ESDD report considered that the Project was being carried out in accordance with the provisions of the Expropriation Law.³⁵

The ESDD report further identified the PRs applicable to the Project. Specifically, the ESDD report noted that PR5 was applicable and that it was

[...] triggered when land acquisition is undertaken involuntarily when the Project has right to legally expropriate land. Resettlement refers both to physical displacement (relocation or loss

³¹ Krnovo Wind Power Plant Project, Environmental and Social Due Diligence Report elaborated by Mott McDonald, July 2013 (the ESDD report), at p. 27.

³² Email dated 17 July 2017 from ESD to PCM. Not publicly available.

³³ ESDD report, p. 5.

³⁴ Ibid.

³⁵ ESDD report, p. 13.

of shelter) and to economic displacement (loss of assets on land or access to assets on land that leads to loss of income sources or other means of livelihoods).³⁶

The ESDD report also indicated that PR10 was applicable and that it

[r]equires project developers to identify stakeholders potentially affected by their project, disclose sufficient information about impacts arising from the projects and engage with stakeholders in a meaningful and culturally appropriate manner throughout the lifecycle of the project and to provide for grievance mechanisms that are scaled to the risks and potentially adverse impacts of the Project.³⁷

The Consultant stated in the report that the REA was carrying out the expropriation process in line with EBRD PR5. With respect to PR10, the Consultant indicated that some gaps needed to be addressed and as such were included in the ESAP. The main points of the Consultant's analysis included in the ESDD report are highlighted below:

- An Environmental Impact Assessment (EIA) was submitted to the Environmental Protection Agency in February 2012. According to the ESDD report, after a public hearing was conducted in the city of Nikšić and comments were provided by NGOs and several experts, the EIA was revised to include enhanced analyses for the associated development of the overhead transmission lines and the assessment of impacts from electromagnetic radiation, among other issues. The EIA was approved in September 2012 and provided some information on social issues and expected Project impacts on the local population. It noted that “[n]egative impacts mainly pertain to land that will have to be acquired for the Project and the quality of such land, which is assessed as being poor for agricultural land and is largely unused.”³⁸ The EIA further noted that “transmission line routes were selected to avoid inhabited areas and acquisition of structures.”³⁹
- The expropriation process undertaken by the REA was initiated with the proclamation that the Project was in the public interest. A list of affected properties, including their cadastral numbers, was included in the EIA and made publicly available. Owners were then invited to the local REA to determine their consent to the expropriation⁴⁰ and were later informed of the decision on expropriation. In case of disagreement, the owner could appeal the decision. The appeal was to be decided by the Ministry of Finance. The owner had subsequently recourse to the local courts to contest the compensation for the expropriation.⁴¹ The ESDD report indicated that as of April 2014, approximately 45% of the affected owners had signed consents for expropriation.⁴²
- With respect to the compensation, the Expropriation Law specified that the owner is entitled to “just compensation” that is defined by the law as “the market value of a similar property in the nearby area, which also includes lost profit incurred during resettlement as well as

³⁶ ESDD report, p. 10.

³⁷ ESDD report, p. 11.

³⁸ ESDD report, p. 26.

³⁹ Ibid.

⁴⁰ ESDD report, p. 36. According to Article 23 of the Expropriation Law “[p]rior to adopting the decision on expropriation, the body referred to in paragraph 1 of this Article shall hear the owner of immovable property about the facts regarding expropriation.”

⁴¹ Articles 23 and 56 of the Expropriation Law.

⁴² According to the REA, the total number of affected privately owned plots was 420, while the number of affected owners was 360. ESD report, p. 35.

resettlement costs.⁴³ Members of the valuation committee (court certified valuers) assessed all affected properties and according to the ESDD report, the committee stated that *“the acquisition of the affected land will not have an impact on income earning activities or livelihoods. The valuers are obliged to assess this during their work and take it into account when determining the value of the property.”*⁴⁴ According to the ESDD report, the compensation price determined by the valuation committee was 1.5 times the current market value of land registered in the area during 2012.

- The Consultant further stated in the ESDD report that the development of a LACP was not necessary as *“no physical or economic displacement is expected to run from this [land acquisition].”* The report explained that

There will be no economic or physical displacement as the land and two buildings affected will still be available to be used, and currently the majority of the land is not used. Therefore nobody will be restricted from accessing their means of livelihood or their place of residence.⁴⁵

- The Consultant indicated the need for KGE to monitor the land acquisition process and this requirement was included in the ESAP.
- With respect to PR10, the ESDD report indicated that stakeholder engagement was carried out during the Project screening and scoping phases and that the EIA was disclosed to stakeholders as required by Montenegrin law. The Consultant noted that a Stakeholder Engagement Plan (SEP) was prepared to address the gaps between EBRD requirements and Montenegrin law, including in particular additional consultation measures in the city of Brezna.⁴⁶
- The report also noted that the Community Liaison Officer (CLO) for the Project was managing Project-related grievances. The SEP included a template for comments and grievances to be provided to stakeholders to enable the lodging of complaints.
- Finally, the ESDD report indicated that in terms of the capacity and commitment of the Client to environmental and social requirements, in particular those contained in PR5 and PR10, *“Akuo and Ivicom have accredited environmental, OHS and quality management systems in place to recognised international standards.”*⁴⁷

Based on the findings of the ESDD report, the Consultant developed an ESAP that included a number of measures to further compliance with PR5 and ensure compliance with PR10. The ESAP was supplemented by an addendum in September 2015. The 2013 ESAP and the addendum included the following relevant measures:

- 5.1. Monitor the land acquisition process. Review the process in detail if more than 30 complaints are received by the Real Estate Agency. Work with Bank to overcome any issues that require redress to meet Bank’s requirements.

⁴³ ESDD report, p. 37.

⁴⁴ ESDD report, p. 36.

⁴⁵ ESDD report, p. 37.

⁴⁶ ESDD report, pp. 39-40.

⁴⁷ ESDD report, p. 43.

- 5.2. Compensate at full replacement value any economic losses suffered by any parties due to project activities, including accidents, animal loss, property damage, etc. [...]
- 10.1. Implement Stakeholder Engagement Plan (SEP), including stakeholder project performance grievance mechanism.

The ESDD report and the other documentation produced in 2013 were reviewed by the ESD team at the Bank in 2015 when the Project was resubmitted for consideration by the Client. The revision was made against the 2014 ESP that had become the applicable Bank policy in the meantime. The gaps that were identified “were closed before the project was submitted for approval to the Board through (i) a bats assessment; (ii) complementary birds surveys; and (iii) meaningful public consultation in the town of Brezna, close to the proposed substation.”⁴⁸

1.3.1.2. Conclusion

The Compliance Review Expert considers that the environmental and social due diligence carried out by the Consultant in July 2013 and the ESD team revision of the 2013 environmental and social assessment was commensurate with the categorisation of the Project and provided solid basis for the ESD team and the Bank Management to appreciate the capacity of the Project to be implemented in accordance with the 2014 ESP as well as the capacity and commitment of the client to implement the Project in accordance with the relevant PRs (Articles 29 and 30 of the 2014 ESP). In addition, the environmental and social due diligence undertook a gap analysis of the Project implementation against PR5 and PR10 and the ESAP included measures to further compliance of the Project with PR5 and ensure compliance with PR10 (Article 33). Finally, the environmental and social requirements were included in the financial agreement as required by Article 42 of the 2014 ESP. The Compliance Review Expert therefore concludes that the Bank has complied with its obligations under 2014 ESP with respect to the environmental and social assessment of the Project.

1.3.2. Environmental and social monitoring of the Project

1.3.2.1. Analysis

As to the monitoring of the environmental and social commitments, in particular of PR5 and PR10, the ESAP also included performance monitoring requirements. The monitoring of the Project was undertaken by the Consultant to assess compliance with the ESAP, who submitted monthly reports, beginning in October 2015 and until September 2016 for the construction phase. The first report for the operational phase was submitted by the Consultant in February 2018 (February 2018 report) and was informed by the review of the Project documentation, the 2017 annual environmental and social performance report issued by KGE and a site visit conducted on 25 January 2018.

With respect to the land acquisition process, the monitoring reports provided detailed information about the submission and handling of grievances regarding access to land as well as the progress of the expropriation process, in particular, the status of the court cases filed by the owners who were dissatisfied with the compensation offered.

⁴⁸ Email dated 17 July 2017 from ESD to PCM. Not publicly available.

In addition to the monthly reports, a group of ESD environmental and social specialists visited the Project in November 2015. This group met with the Complainant and the Client to discuss the Complaint. Following the meeting, the ESD team asked the Consultant to monitor closely the Complainant's case and provide regular updates. To respond to this requirement, the monitoring reports included a separate section on the Complaint. Furthermore, following the site visit of the Project in May 2016, ESD asked the Consultant to provide a memorandum assessing the compliance of the land acquisition process with PR5, notably regarding the Complaint.⁴⁹ The memorandum was submitted on 9 June 2016 (June 2016 memorandum) and stated that *"based on the knowledge set out in this memo, the expropriation process is currently compliant with EBRD PR5."* As to the Complaint, the Consultant considered that the Client *"has done a great deal to try and help resolve the pending issues."* In particular:

- With respect to the **negotiation and compensation** for the expropriated land, the Consultant indicated that according to the Client, it was necessary to have an active court case in order to be able to undertake negotiations. The Client's lawyer stated that *"once the landowner had re-opened his court case, a negotiation regarding the compensation for 426m² would be possible; however he would not be able to negotiate a compensation for the full 16,100 m²."*
- With respect to the **scope of the decision on expropriation**, the memorandum noted that the CLO had organised multiple meetings with the Complainant, the Cadastre and the neighbour that is contesting the ownership of 5,000m² of the Complainant's land. However, no agreement had been reached. In addition, the memorandum noted that the Client's lawyer had helped the Complainant to submit all required documentation to contest the ownership of his land. The memorandum further noted that the Client's lawyer indicated that request for compensation for the remaining of the Complainant's land (ie 16, 000m²) had to be decided by the courts.⁵⁰
- With respect to the **grievance mechanism**, the memorandum referred to the grievance mechanism relating to access to land and found the Client compliant, given that complaints relating to the expropriation had been submitted for resolution by the courts. In this regard, the memorandum noted that the Client had closely monitored the progress of the cases and attempted negotiations when possible. The memorandum stated that *"as recommended in EBRD PR5, the Project lawyer is working with landowners to achieve mutually agreed settlements particularly of small land parcels outside the Court in order to avoid lengthy Court processes and legal fees."*⁵¹

The February 2018 report confirmed that the expropriation process was compliant with PR5. However, it recommended some additional actions. The report noted:

⁴⁹ Ibid.

⁵⁰ Memo on current status of expropriation process on the Krnovo wind farm project, June 2016, p. 5. Not publicly available.

⁵¹ Memo on current status of expropriation process on the Krnovo wind farm project, June 2016, p. 3. Not publicly available.

The expropriation process is generally compliant. The Project lawyer has greatly increased overall transparency and clarity of the expropriation process. The CLO has been successful at resolving grievances amicably and establishing good relationships with former landowners.

Action required:

- Continue to monitor expropriation in order to ensure that the process remains on track
- Continue to provide monthly reports and annual summaries to the Lenders on the status of compensations for the Project site. In future monthly reports, we also recommend the inclusion of details on any grievances received concerning land acquisition and economic impacts in the reporting period
- Lenders should confirm their satisfaction with the current expropriation process concerning the households that have been compensated at the lower rate than the newly determined market rates. Mott MacDonald is willing to discuss this matter with the Lenders, to assist them in reaching a final confirmation on the compliance of this aspect of the Project with IFC PS5 and EBRD PR5.
- Once the Lenders' confirmation has been given, KGE will need to conduct ongoing monitoring of community grievances received, to check that there is no intracommunity tensions and conflicts with the Project area.
- Monitor reimbursement process and ensure that household's standard of living does not drop below pre-Project levels as a result.⁵²

With respect to the Complainant, the February 2018 report indicated:

One affected landowner had previously raised multiple formal complaints through the EBRD GRM. The court case involving his land plot was resolved during the construction phase and the market rate of 3.2€/m. was determined for him and six other landowners. Concerning his ownership dispute with a neighbour over a 5,000m. land parcel, he has stated a preference for this to be resolved out of court. The process for compensation of this affected land owner is compliant with IFC PS5 and EBRD PR5 but without an active court case the Project is not able to provide any more assistance or engage the Project lawyer to reach a settlement.⁵³

While the monitoring reports, the June 2016 memorandum and the February 2018 report refer to the grounds of complaint raised by the Complainant and find that the Client had complied with PR5, it is important to make some clarifications in order to provide a comprehensive response to the Complainant's concerns. In addition, as some grounds of complaint have not been resolved at the time of completion of this report, it is important to ensure that the Bank is enabled to adequately follow the resolution of these concerns as part of the ongoing monitoring that is expected during the operational phase, in order to ensure compliance with the 2014 ESP.

Negotiation, consultation and compensation

PR5 "encourages" clients to acquire land rights through negotiation but does not impose an obligation to do so. The clients retain the possibility to opt for using other legal means to have access to the land, as long as PR5 is observed. In this respect, the absence of negotiation does not necessarily entail a breach of PR5.

⁵² Krnovo Wind Farm, Montenegro. First Environmental and Social Monitoring Report – Operation Phase, February 2018, p. 2. Not publicly available.

⁵³ Krnovo Wind Farm, Montenegro. First Environmental and Social Monitoring Report – Operation Phase, February 2018, p. 16. Not publicly available.

With respect to the consultation, the Expropriation Law does not require consultation for the expropriation process. However, the EIA included a consultation hearing and the submission of written comments. While it is not clear if affected owners took part in this consultation, the subsequent expropriation process included the publication of information on affected properties and allowed affected people to oppose the decision on expropriation and contest the amount of compensation.

In the case at hand, the Complainant did not agree with the market value assigned by the RAE to the expropriated land. When the market value was contested in court, the valuation expert assigned by the court conducted a throughout analysis of the value of the Complainant's land that included a site visit and an analysis of similar transactions carried out in the area during the relevant period of time. In addition, the valuation expert noted

In the course of establishing market value of the subject land, I also took into account the other parameters: cadastral classification, land capability, distance from the town core and village settlements, position with regard to major roads and possibility of access from these roads, plot size, altitude, exposition, manner of exploitation, existence of infrastructure etc⁵⁴

There is no allegation relating to the capacity or competence of the court to decide over the value of the land. A final decision by the high court of Bijelo Polje has been adopted establishing the market value of the land at 3,23 m². It is important to note that the decision included compensation for the amounts incurred by the Complainant in litigating the case, including legal fees and costs of transportation.⁵⁵ However, it is not clear if transaction costs were included. **Since PR5 requires that compensation be provided at replacement costs (that is market value plus transaction costs related to restoring the expropriated asset), it is important for the Bank to satisfy itself that it has been the case. This approach is consistent with the recommendation provided in the February 2018 report that the “[I]nders should confirm their satisfaction with the current expropriation process concerning the households that have been compensated at the lower rate than the newly determined market rates.”**

Scope of the decision on expropriation

The Law on Expropriation provides the possibility for the landowner to request the expropriation of the remaining part of the land when only a portion has been expropriated. Article 8 of the Expropriation Law provides:

Expropriation of the Remaining Part

If it is determined, during expropriation of one part of immovable property, that the owner does not have the economic interest to use the remaining part of the immovable property, or if, as a result, his existence on the remaining part of the immovable property is made impossible or significantly more difficult, that part of immovable property shall also be expropriated, at his request.

When asked by the Compliance Review Expert if he had formally requested the expropriation of the remaining part of the land (in particular the 16,000 m² where ownership is uncontested), the

⁵⁴ Expert's appraisal for the basic court in Žabljak, 27 November 2014. Document provided by the Complainant and not publicly available.

⁵⁵ Decision of 18 December 2017 by the High Court of Bijelo Polje.

Complainant indicated: *“No, because it is not allowed. I could only submit a complaint after the case about price determination is resolved and ask for damage compensation.”*⁵⁶ Now that the high court has decided on the Complainant’s case fixing a price for the expropriation,⁵⁷ the option is open to formally request the expropriation of the remaining land. It is important to note that overhead lines of the Project pass through part of this portion of land.

However, the possibility to negotiate with the Client appears to remain also open. The Expropriation Law does not exclude the possibility of direct negotiation. Moreover, negotiations undertaken by the Client to date have been done with the *“GoM’s awareness and understanding and negotiated compensation amounts are in addition to the compensation amount KGE has provided to the GoM for the expropriation process.”*⁵⁸ The Client has continually argued that in order to engage negotiations with the Complainant it is necessary for a court process to be “open”. While Compliance Review Expert requested several times to the Client to provide the legal grounds for such a requirement, the Client failed to provide an answer.

It is also important to note that the June 2016 memorandum indicates that the Complainant was not offered compensation for the right of way under the overhead line that is passing over his land parcel as *“not paying for the right of way is a policy established by the CGES (Montenegrin TSO) for all Montenegro.”*⁵⁹ PR5 is not explicit about compensation for the right of way but it indicates as part of its objectives the need to *“mitigate adverse and economic impacts from land acquisition or restrictions on affected persons’ use of and access to assets and land [...]”*. In terms of GIP, a report by the World Bank on wind practices indicates that *“it is good practice to seek out ways of addressing economic, safety-related, or aesthetic concerns of landowners whose properties are traversed by the lines.”*⁶⁰

The June 2016 memorandum further noted that:

[...] once the transmission line has been built, there will be certain restrictions regarding what the landowners can and cannot do under the overhead line. In the last construction monitoring report in October 2015, KGE was asked to establish a clear compensation and access framework for private landowners affected by the transmission line which was to include:

- Table with clearly defined roles and responsibilities for the implementation of the framework.
- Compensation criteria for damage caused due to access, construction, maintenance and repair of the transmission line.

⁵⁶ Email from the Complainant to the Compliance Review Expert dated 27 October 2017. Not publicly available.

⁵⁷ See Part I, Section 4 above, the decision by the high court of Bijelo Polje of 18 December 2017 confirming the decision of 5 July 2017 by the basic court of Žabljak establishing that the market value of the expropriated land was 3,23€/m²

⁵⁸ Memo on current status of expropriation process on the Krnovo wind farm project, June 2016, p. 5. Not publicly available.

⁵⁹ Id.

⁶⁰ Ledec, George C.; Rapp, Kennan W.; Aiello, Roberto G. 2011. *Greening the wind: environmental and social considerations for wind power development (English)*. A World Bank study. Washington, DC: World Bank, p. 82, available at: <http://documents.worldbank.org/curated/en/239851468089382658/Greening-the-wind-environmental-and-social-considerations-for-wind-power-development> (Last accessed 11 February 2018).

- Information to be provided on what people will be able to do or not once the transmission line is constructed (e.g. setting fire, planting trees, or constructing irrigation channels).⁶¹

With respect to the observance of the requirement for a compensation and access framework, the February 2018 report noted that

[w]hile the framework document has not been prepared, monthly reporting on all compensation provided for any economic loss experienced by landowners was provided in the construction phase. The reporting showed that compensation for economic losses were managed adequately and therefore is considered sufficient to supersede the requirement for a framework to be developed, and close this ESAP item.⁶²

It does not appear that this has been done in the case of the Complainant, in particular with respect to the land under the overhead lines. The Complainant alleges that his land has been impacted by the presence of the overhead lines and that there is no clarity about access to the lines in case of maintenance or reparation. The Client argues that there is no restriction in the use of the land and thus no need for compensation. The situation of the Complainant should therefore be clarified following the guidelines provided by the Consultant in the June 2016 memorandum and GIP. **It is important for the Bank to continue to closely monitor this aspect of the Complaint and get satisfaction that compensation meets the requirements of PR5.**

Finally, the Complainant's complaint regarding the dispute over the ownership of part of its land (the plot equivalent to 5,000m²), is a matter to be decided by the Cadastre and therefore it is not the responsibility of the Client of the Bank. However, **once ownership is established, the Bank should ensure that compensation is provided by the Client to the legitimate owner, in accordance with the Expropriation Law, PR5 and the Consultants recommendations.**

Grievance mechanism

According to the Consultant, the CLO acted as the point of reception of grievances prior to the Bank's involvement with the Project in 2015. In accordance with the commitments included in the SEP and the ESAP prepared in 2013 and confirmed in 2015, the Client reported on the existence of a grievance mechanism by providing information on the grievance log and the progress with dealing with complaints submitted. This approach appears to be consistent with the EBRD Guidance Note on Grievance Management that indicates:

In smaller projects, the client can simply designate a point of contact within the public relations department or communications offices, to which grievances should be addressed. Once the grievance has been received and acknowledged, one or several trained staff should be allocated resolution responsibilities depending on the scope of the grievance.⁶³

Whereas grievances related to access to land have been referred to the mechanism made available by the Client, it appears that complaints relating to the expropriation and in particular

⁶¹ Memo on current status of expropriation process on the Krnovo wind farm project, June 2016, p. 4. Not publicly available.

⁶² Krnovo Wind Farm, Montenegro. First Environmental and Social Monitoring Report – Operation Phase, February 2018, p. 17. Not publicly available.

⁶³ EBRD Guidance Note on Grievance Management, May 2012, p. 5.

the level of compensation, had been submitted to local courts and monitored by the Client.⁶⁴ The Montenegrin courts have been providing resolution to the claims, including in the case at hand when a final decision by the high court on the amount of compensation was delivered on 18 December 2017.

As to the availability of the grievance mechanism, the EBRD Guidance Note explains that:

Leaflets, website links, posters in administrative offices and public places, or complaint boxes at strategic locations are all good ways to make sure that potential complainants can submit their grievances.⁶⁵

Making the grievance mechanism available online is therefore one of the options for the Client to provide information on the mechanism, but not the only one or the preferred one. In the current case, it is not clear if the grievance mechanism was available online. While the Complainant alleged that he could not find the mechanism online, the Client argued that the mechanism was available online for a period of time but was unable to provide evidence of the posting. However, the Client submitted evidence of having provided information on the grievance mechanism using other channels, in particular, leaflets that were placed in public places. Moreover, the monitoring reports submitted by the Consultant showed the utilisation of the grievance mechanism established by the Client, thus confirming it was available and accessible for impacted people.

While the February 2018 report finds the Client compliant with PR10, in particular with respect to the grievance mechanism, it requires additional actions to ensure full compliance. In particular, the report requires that the Client include *“the up-to-date website link and community liaison contact details for the Project”* as well as *“reinitiate the recording of all external grievances received in the log.”*⁶⁶

Finally, PR5 provides that the grievance mechanism should include a recourse mechanism designed to resolve disputes in an impartial manner. This includes the involvement of a third independent party, through arbitration or mediation.⁶⁷ However, given the size of the project and the type of impacts that were identified during the ESDD, it does not appear that such a recourse mechanism was necessary. This approach is consistent with PR10 that in its relevant part indicates that *“[t]he grievance mechanism should be scaled to the risks and potential adverse impacts of the project.”*

In addition, the Montenegrin courts, as already noted, have been providing resolution to the complaints raised with respect to the amount of compensation.

1.3.2.2. Conclusion

The Compliance Review Expert considers that the monitoring measures put in place to monitor the expropriation process and address the Complaint, including the submission of monthly

⁶⁴ This is explained in the monthly environmental and social reports submitted by the Consultant and reported in the grievance logs that were reviewed for this Compliance Report.

⁶⁵ EBRD Guidance Note on Grievance Management, May 2012, pp. 5-6.

⁶⁶ Krnovo Wind Farm, Montenegro. First Environmental and Social Monitoring Report – Operation Phase, February 2018, p. 18. Not publicly available.

⁶⁷ EBRD Guidance Note on Grievance Management, May 2012, p. 5.

reports by the Consultant during the construction phase and the site visits of the Consultant and the ESD team, enabled the Bank Management to track the compliance of the Client with the ESAP, in particular with respect to PR5 and PR10. The Compliance Review Expert therefore concludes that – up to the date of completion of this compliance report – the Bank has complied with its obligations under 2014 ESP with respect to the monitoring of the Project, in particular with article 45 of the 2014 ESP. However, as some grounds of complaint remain to be fully addressed by the Client and in order to ensure further compliance with the 2014 ESP, it is necessary that the Bank continues to closely monitor the Client's compliance with PR5 during the operational phase of the Project, in accordance with the indications provided section 1.3.2.1. of this report.

List of Abbreviations

2014 ESP	: 2014 Environmental and Social Policy
2014 PCM RPs	: 2014 PCM Rules of Procedure
2014 PIP	: 2014 Public Information Policy
CLO	: Community Liaison Officer
CGES	: Cnorgorski Elektroprenosni Sistem, the state-owned transmission company
EAR	: Eligibility Assessment Report
ESAP	: Environmental and Social Action Plan
ESD	: EBRD Environment & Sustainability Department
ESDD	: Environmental and Social Due Diligence
GIP	: Good International Practice
OHL	: Overhead Line
PCM	: Project Complaint Mechanism
PRs	: Performance Requirements
SEP	: Stakeholder Engagement Plan
ToRs	: Terms of Reference