

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

PROJECT COMPLAINT MECHANISM

COMPLIANCE REVIEW MONITORING REPORT I

OMBLA HYDROPOWER PROJECT, REQUEST NUMBER: 2011/06

November 2014¹

¹ The report is prepared based on the update on the Management Action Plan received in July 2014.

Compliance Review Monitoring Report

This Compliance Review (CR) Monitoring Report is prepared pursuant to article 44 of the PCM Rules of Procedure (2009) (PCM RPs 2009), whereby the PCM Officer monitors the implementation of the recommendations of a CR Report following a finding of non-compliance.

PCM reviewed a Complaint about the EBRD's Ombla Hydropower Project (HPP) in Croatia, completing the CR at the end of 2013. The CR Expert made a finding of non-compliance on one of the five grounds raised in the Complaint, namely in relation to the Performance Requirement (PR) 6 of the EBRD's Environmental and Social Policy 2008 (ESP). The CR² Report was posted on the PCM website on 1 January 2014.

The CR Report included recommendations to address the findings of non-compliance, in response to which the Bank's Management prepared a Management Action Plan³ (MAP), in accordance with article 41 of the PCM RPs 2009. The MAP addressed whether the recommendations were appropriate and put forward a timetable and estimate of the human and financial resources required to implement the recommendations. The Complainant had an opportunity to comment on the MAP, in accordance with article 42 of the PCM RPs 2009, and the Complainant's comments⁴, were also publicly released on 1 January 2014.

PCM monitors the implementation of the recommendations of the CR Report and prepares CR Monitoring Reports at least biannually. This is the first CR Monitoring Report for the Ombla HPP project. The report is prepared based on the update on the Management Action Plan received from the Bank's Management in July 2014 and reflects the status of implementation at the time. The next report will be published early 2015 and will cover the six-month period from July 2014 to December 2014.

Summary of the Complaint

PCM received a Complaint from the non-governmental organisation (NGO) Zelena akcija/Friends of the Earth Croatia concerning the Ombla HPP Project on 17 November 2011. The Complaint⁵ was registered according to the PCM RPs 2009 on 24 November 2011.

The Eligibility Assessment found the Complaint eligible for a CR and the Eligibility Assessment Report⁶ was publicly released and posted on the PCM website on 12 July 2012.

PCM Expert Graham Cleverly conducted the CR⁷ making a finding of non-compliance in respect of only one of the grounds set out in the Complaint, determining that the Bank's approval of the Project in advance of the completion of a conclusive biodiversity assessment amounted to non-compliance with the requirements of PR 6 of the 2008 ESP. The CR Report was publicly released and posted on the PCM website on 1 January 2014.

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

³ www.ebrd.com/downloads/integrity/Ombla_MAP.pdf

⁴ www.ebrd.com/downloads/integrity/Ombla_comments_to_map.pdf

⁵ www.ebrd.com/downloads/integrity/Ombla_complaint_17.11.2011.pdf

⁶ www.ebrd.com/downloads/integrity/Ombla_ear_6.07.2012.pdf

⁷ www.ebrd.com/downloads/integrity/Ombla_CRR.pdf

CR recommendations

Pursuant to article 40 of the PCM Rules of Procedure (2009), the CR Report included recommendations to:

- A. address the findings of non-compliance at the level of EBRD systems or procedures to avoid a recurrence of such or similar occurrences; and/or
- B. address the findings of non-compliance in the scope of implementation of the Project taking into account of prior commitments by the Bank or the Client in relation to the Project; and
- C. monitor and report on the implementation of any recommended changes.

Status of implementation

In preparation of this first CR Monitoring Report, the PCM requested the Bank's Management to provide an update on the progress with the implementation of the commitments agreed to in the MAP.

The Management's update is presented in the table that follows, which also includes PCM's comments on the status of compliance.

OMBLA HYDROPOWER PROJECT: PCM COMPLIANCE REVIEW MONITORING REPORT

July 2014

A. Recommendations to address the findings of the PCM Compliance Review Report at the level of EBRD systems or procedures			Update and monitoring	
Recommendation	Management Response	Resources/Timetable	Management Progress Report	Compliance status
<p>Development of guidance / formal procedures by ESD to assist Bank staff in deciding at which point the environmental and social appraisal of a project is sufficiently complete to allow submission of the project for Board approval.⁸</p>	<p>Management proposes to refine internal operational procedures to clarify the circumstances under which Board approval to defer elements of environmental and social appraisal until after Board approval could be sought, providing that appropriate contingencies or other obligations placed on the borrower are included in the financing agreements, including the Environmental and Social Action Plan (ESAP). Management also proposes that internal operational procedures will be amended to clarify the decision making process and documentation of such decisions, and enhance the information provided to the Board on such circumstances and</p>	<p>No additional resources needed. Internal operational procedures will be refined in 2014, following Board approval of the revised ESP.</p>	<p>The revised Environmental and Social Policy was approved by the EBRD Board of Directors on 7 May 2014. Other supporting documents, such as procedures and guidance notes are now being planned.</p>	<p>The implementation of these items is in process.</p> <p>PCM will continue monitoring the implementation of these recommendations and will request an update from the Management on the progress with the preparation of the procedures and guidance notes for the next Monitoring Report.</p> <p>PCM notes the Complainant's Comments on the Management Action Plan (December 2013⁹), where the Complainant points out that where the guidelines do not form part of the new Environmental and Social Policy itself, they should be publicly available.</p>

⁸ Some Recommendations cover more than one topic, so have been separated by row so that the management response can address each specific issue.

⁹ www.ebrd.com/downloads/integrity/Ombla_comments_to_map.pdf

	contingencies relating to further environmental and social appraisal when their approval is sought.			
<p>Where, due to exceptional circumstances, project approval is unavoidably required in advance of completion of the requisite environmental and social appraisal:</p> <p>- Development of formal procedures for taking decisions on disbursement of funds where such disbursement is subject to the satisfaction of contractual conditions relating to further environmental and social appraisal;</p>	<p>Management believes that the Bank has robust procedures that govern decisions on disbursement of funds, including decisions taken upon completion of required additional environmental and social appraisal, and involve a number of Bank departments in making such decisions. In such cases where further environmental and social appraisal is required as a condition of disbursement, the Environmental and Social Department (ESD) must deem the relevant disbursement conditions having been satisfied before disbursement can take place. Management proposes to amend internal operational procedures to clarify the decision making process and documentation of such decisions. Management also proposes to amend internal operational procedures to enhance the information provided to the Board to ensure the Board is fully informed on conditions relating to further environmental and social appraisal as a condition of disbursement when their approval is sought.</p>	<p>No additional resources needed. Internal operational procedures will be revised in 2014, following Board approval of the revised ESP.</p>	<p>The Environmental and Social Procedures are now being revised to reflect the new Environmental and Social Policy. This action item will be reflected in that document, which will be finalised in 3Q 2014.</p>	

<p>- Development of formal procedures to ensure full transparency in relation to the fact that that a project has received Bank approval with disbursement of funds subject to subsequent satisfaction of contractual conditions relating to further environmental and social appraisal, and in relation to decision-making on such disbursement.</p>	<p>Management deems that more transparency is appropriate when projects are approved on the basis of further environmental and social appraisal to be completed that may affect disbursement decisions and thus project implementation. Management proposes that for projects with disbursement/ implementation requirements contingent upon further environmental and social appraisal, the Bank's Project Summary Documents (PSDs) disclosed on www.ebrd.com will explicitly identify these requirements. PSDs will be updated as needed to disclose information on subsequent environmental and social appraisals and associated contingent disbursement decisions. ESD's internal guidance for preparing the environmental and social impact sections of PSDs will be amended to reflect this commitment.</p>	<p>No additional resources needed. ESD's internal guidance for preparing PSD Environmental Impact Sections will be amended in 2014, following Board approval of the revised ESP.</p>	<p>Following the policy approval, a number of procedures and guidance documents are being revised.</p> <p>A guidance note for staff on the environmental and social section of the Project Summary Document (PSD) is being revised and will include this point. We will also work with the Secretary General's Office on the guidance for implementation of the Public Information Policy, which has the requirements for PSDs.</p> <p>The Environmental and Social Procedures are now being revised to reflect the new Environmental and Social Policy. This action item will be reflected in these documents, which will be finalised prior to the 2014 ESP and PIP entering into force on 7 November 2014.</p>	
<p>B. Recommendations to address the findings of the PCM Compliance Review Report regarding the scope or implementation of the Project</p>			<p>Update and monitoring</p>	
<p>- Development of an open and transparent scheme for monitoring whether the requirements of the ESAP and, to the greatest extent possible, the requirements of PR 6 of the</p>	<p>Management considers that the preparation of a satisfactory biodiversity study was appropriately established in this project as a condition precedent for disbursement under the EBRD</p>	<p>No additional action or resources needed. EBRD monitoring of the implementation of the ESAP requirements will</p>	<p>Not applicable.</p>	<p>PCM notes the Management's position that the Bank's current procedures provide sufficient basis for an open and transparent scheme for monitoring that relevant</p>

<p>2008 ESP, have been adequately fulfilled before disbursement of funds takes place. Such a scheme should be subjected to independent monitoring and oversight, possibly by the Compliance Review Expert or another PCM Expert pursuant to PCM RP 46.¹⁰</p>	<p>loan. In accordance with its ESP and internal operational procedures, the Bank did indeed have for the Ombla project an open and transparent scheme for monitoring as to whether the requirements of the ESAP and the requirements of PR 6 of the 2008 ESP were adequately fulfilled before disbursement of funds. This involved, among others, public disclosure of the additional biodiversity study and five further public meetings with key stakeholders on its results and conclusions. The degree of public engagement that was experienced attests to the effectiveness of the process.</p> <p>The Bank's requirements on Ombla project demonstrate that the Bank has robust and effective processes and procedures for monitoring the status and success of the ESAP implementation. This includes mandatory annual reporting by clients, independent third-party assessments, and direct Bank assessments. This is considered sufficient to address</p>	<p>continue throughout the Bank's involvement in projects throughout their life.</p>		<p>requirements have been fulfilled and did not commit to undertaking any further action on this recommendation. PCM will therefore not continue its monitoring of this item, also based on the fact that the project was terminated.</p>
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¹⁰ PCM RP 46: The PCM Experts will be responsible for serving as Eligibility Assessors, Compliance Review Experts, or Problem-solving Experts, and may be responsible, upon delegation by the PCM Officer, *for any follow-up monitoring and reporting*. (Emphasis added).

	the recommendation for independent monitoring and oversight.			
D. Monitor and report on the implementation of any recommended changes				
The Compliance Review Expert recommends that implementation of the various recommendations proposed above are monitored by Bank officials and that a report be prepared upon completion of these tasks and agreed with relevant Bank officials, the PCM Officer, and HEP before being posted on the PCM section of the EBRD website.	Bank Management will cooperate in the reporting requirements of the PCM Officer in accordance with the PCM Rules of Procedure every six months until issues are closed. It is not clear what role is recommended for HEP in this process, but any such role will be determined by the PCM Officer in consultation with Bank Management.	No additional action or resources needed. Bank staff will cooperate with the PCM officer's preparation of the bi-annual reporting on the Action Plan until items are closed.	This is the first bi-annual report.	This item does not require any further monitoring. This recommendation is based on PCM RP 40 and the Bank's Management cooperates with the PCM in preparation of these reports fully.