

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**PROJECT COMPLAINT MECHANISM  
COMPLIANCE REVIEW MONITORING REPORT I  
PARAVANI HYDROPOWER PROJECT, REQUEST NUMBER: 2012/01**

**November 2014<sup>1</sup>**

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<sup>1</sup> 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 Paravani Hydropower (HPP) project in Georgia, completing the CR at the end of 2013. The CR Expert made a finding of non-compliance on three of the six elements of the Complaint, namely the Performance Requirements (PR) 1, 6 and 10 of the EBRD's Environmental and Social Policy 2008 (ESP). The CR<sup>2</sup> 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 Plan<sup>3</sup> (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 comments<sup>4</sup>, 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 Paravani 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) Green Alternative, Georgia, concerning the Paravani HPP Project on 22 December 2011. The Complaint<sup>5</sup> was registered according to the PCM RPs 2009 on 4 January 2012.

The Eligibility Assessment found the Complaint eligible for a CR and the Eligibility Assessment Report<sup>6</sup> was publicly released and posted on the PCM website on 24 October 2012.

*Ad hoc* PCM Expert Glen Armstrong conducted the CR<sup>7</sup> making a finding of non-compliance in respect of three of the six elements of the Complaint. Two of these elements relate to the issue of biodiversity, in particular PRs 1 (Environmental and Social Appraisal and Management) and 6 (Biodiversity Conservation and Sustainable Management of Living

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<sup>2</sup> [www.ebrd.com/downloads/integrity/Paravani\\_CRR.pdf](http://www.ebrd.com/downloads/integrity/Paravani_CRR.pdf)

<sup>3</sup> [www.ebrd.com/downloads/integrity/Paravani\\_MAP.pdf](http://www.ebrd.com/downloads/integrity/Paravani_MAP.pdf)

<sup>4</sup> [www.ebrd.com/downloads/integrity/Paravani\\_comments\\_on\\_MAP.pdf](http://www.ebrd.com/downloads/integrity/Paravani_comments_on_MAP.pdf)

<sup>5</sup> [www.ebrd.com/downloads/integrity/paravani\\_complaint\\_22.12.2011.pdf](http://www.ebrd.com/downloads/integrity/paravani_complaint_22.12.2011.pdf)

<sup>6</sup> [www.ebrd.com/downloads/integrity/ear\\_paravani.pdf](http://www.ebrd.com/downloads/integrity/ear_paravani.pdf)

<sup>7</sup> [www.ebrd.com/downloads/integrity/Paravani\\_CRR.pdf](http://www.ebrd.com/downloads/integrity/Paravani_CRR.pdf)

Natural Resources), the third element is in relation to PR 10 (Information Disclosure and Stakeholder Engagement) of the ESP. The CR Report was publicly released and posted on the PCM website on 1 January 2014.

### **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.

Also during the preparation of this report PCM requested and received comments from the Complainant which were also considered. In his comments the Complainant raises concerns regarding the implementation of the recommendation 6 in the table below. The Complainant claims that contrary to the recommendation that the EBRD should work with GUE to prepare and disclose a comprehensive annual report updating the ESIA/ESAP, on which consultation can take place and which can inform future HPP developments within Georgia, this has not happened yet. In July 2014, the EBRD Management provided the PCM with an update on the implementation of this recommendation, taking into account the Complainant's correspondence.

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

## PARAVANI 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	PCM Comments on compliance status
<p>1. “It is recommended that EBRD issue specific guidance to its specialist E&amp;S staff and to investment staff on the requirements of the Initial Environmental and Social Examination (IESE). This examination must (i) Identify the key E&amp;S issues which must be fully investigated (through appropriate baseline and predictive studies) as part of the ESIA in advance of the board decision to invest in principle, and (ii) Adequately convey these requirements to the project sponsors such that they can be integrated into the project timeline, stakeholders engagement planning and reporting.”</p>	<p>Management proposes that these recommendations will be accommodated by amending and clarifying the existing guidance for preparing the Environmental and Social Due Diligence (ESDD) Plans for projects requiring an Environmental and Social Impact Assessment (ESIA), as appropriate. Management notes that the Bank’s ESIA requirements already include a scoping stage to be undertaken at an early stage of the ESIA process to identify, in consultation with key stakeholders, as appropriate, all the potential impacts and issues, which must be investigated as part of the ESIA. For projects which have already been subject to a local environmental assessment and public consultation, the Bank commissions a Gap-analysis of</p>	<p>No additional resources needed. Environmental and Social Procedures and guidance for preparing ESDD Plans for ESIA’s will be revised 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>E&amp;S Procedures and internal guidance will be prepared before EBRD 2014 ESP becomes operational on 7 November 2014.</p>	<p>The implementation of this item is in process.</p> <p>PCM will continue monitoring the implementation of this recommendation and will request an update from the Management on the progress with the revised E&amp;S Procedures and internal guidance for the next Monitoring Report.</p>

	<p>existing documentation against the Bank's requirements at the initial stages of the ESIA process to identify additional investigations required to meet the Bank's ESIA requirements and prepare Terms of Reference for the supplementary studies.</p> <p>Management notes that the IESE is used when insufficient information is available at the time of categorisation to determine the appropriate category and scope of due diligence and, therefore, the Management's believes the proposal above would be a more appropriate way to implement these recommendations.</p>			
<p>2. "PCM recommends that EBRD issue legally derived advice (potentially integrated into the next version of the ESP) on how the relevant EU directives are interpreted for the purposes of undertaking biodiversity assessments under performance requirement 6 of the ESP. Whilst EU legislation of course changes, most of the relevant directives have been in place for many years and the underlying principles have not changed. In any case the ESP has a finite life (say 5 years) and</p>	<p>Management proposes to clarify the role of the Bank in relation to the EU Directives in the next version of the ESP and PR6.</p>	<p>No additional resources needed. ESP and PR 6 will be reviewed and revised as appropriate during the ongoing review of ESP.</p>	<p>The revised Environmental and Social Policy was approved by the EBRD Board of Directors on 7 May 2014. The text on EU requirements and the role of the Bank is found in article 7 and footnote 6 of the ESP:</p> <p><i>EBRD, as a signatory to the European Principles for the Environment, is committed to promoting the adoption of EU environmental principles, practices and substantive standards<sup>6</sup> by EBRD financed projects, where these can be</i></p>	

the advice within it could be applicable for that period and then revised according to any changes in EU requirements.”

*applied at the project level, regardless of their geographic location. When host country regulations differ from EU substantive environmental standards, projects will be expected to meet whichever is more stringent. (Footnote 6: Substantive environmental standards of the EU are comprised in EU secondary legislation, e.g., regulations, directives and decisions. Procedural norms directed at Member States and EU institutions and the jurisprudence of the European Court of Justice and the Court of First Instance which applies to Member States, EU institutions and EU legal and natural persons, is excluded from this definition.)*

In addition, a guidance note for PR6 will be prepared with the help of independent biodiversity experts. The ToR has been prepared and they address this recommendation and will provide guidance on biodiversity assessment that is to be carried out in accordance with EU Habitat Directive and associated

			guidance when a project could have a significant impact on the conservation objectives or integrity of a protected area comparable to a Natura 2000 site. The guidance note is expected to be completed by the year end.	
3. "PCM recommends that EBRD review this issue [that is, whether certain characteristics of the Paravani project should have triggered a strategic assessment] and prepare guidance on how the strategic context of the project should be assessed at the IESE stage and under what circumstances the 'exceptional' requirement for additional strategic studies would be triggered. EBRD should also advise on how existing strategic analysis should be integrated into documents disclosed as part of the project preparation process. Guidance should also be provided on the scope of analysis required within ESIA documentation on the analysis of project alternatives."	Management notes that the current Environmental and Social Policy (ESP) does not place any obligation to EBRD or its clients to undertake strategic assessments. Strategic (environmental) assessments are undertaken of policies, plans or programmes and are, therefore, a tool for national or regional authorities. The Bank may through its policy dialogue with such authorities support preparation of strategic assessments where they support the Environmental and Social Appraisal of the Bank's projects, especially when there is a significant concern for the potential cumulative impacts of a number of similar projects in the same geographical area. The Bank also takes into consideration existing strategic assessments, when available, in its project-specific Environmental and Social	No additional resources needed. Internal operational procedures and guidance will be refined in 2014, following Board approval of the revised ESP.	Internal guidance will be prepared prior to 7 November 2014.	The implementation of this item is in process.  PCM will continue monitoring the implementation of this recommendation and will request an update from the Management on the progress with the preparation of the internal guidance for the next Monitoring Report.

	<p>Appraisal.</p> <p>Management notes that Paravani HPP project was part of a strategic hydropower sector review of Georgia led by the World Bank that was completed before the project development started and its findings were taken into consideration in the Bank's due diligence of the project.</p> <p>Management proposes to clarify in its internal guidance the ways in which strategic assessments are taken into consideration in the Bank's project-specific Environmental and Social Appraisal.</p>			
<p>4. "PCM recommends that in its review of the ESP EBRD integrate a requirement to this effect [that is, ESIA for "Category A and other projects which may have significant environmental and social impacts" should be "... available in an internationally accessible language"] and consider whether when it believes that such a requirement would be too great a financial burden to place on the project sponsor that it undertakes the translation itself and discloses it as part of its</p>	<p>Management notes that the provision of an ESIA in English is neither a requirement of the 2008 ESP or the PIP. The ESP/PR10 requires the Bank's clients to prepare a Stakeholder Engagement Plan (SEP) to identify who is affected or interested in a project and how communication will work. The SEP should also determine in what language documents will be prepared and disclosed for public comment.</p> <p>Management proposes to review the guidance for SEPs to make</p>	<p>No additional resources needed. Guidance for preparing Stakeholder Engagement Plans will be reviewed and amended, as appropriate, in 2014, following Board approval of the revised ESP.</p>	<p>The Bank is currently updating its guidance notes following approval of the new ESP and this issue will be incorporated in both the internal and external guidance on Category A disclosure and Stakeholder Engagement Plans. The revision of the ESP and PIP has led to a commitment of the Bank to release more information on environmental and social issues. After 7 November, the Project Summary Documents of new Category A projects will be updated annually</p>	<p>The implementation of this item is in process.</p> <p>PCM will continue monitoring the implementation of this recommendation and will request an update from the Management on the progress with the guidance on Category A project disclosure and Stakeholder Engagement Plans for the next Monitoring Report.</p>



<p>transition role. This would also enable consideration of the documents by EBRD staff not speaking Georgian. Where ESIA documents are prepared in a language which cannot be reviewed by the relevant EBRD staff PCM recommends that EBRD commission an independent consultant to review the documents against EBRD requirements and that EBRD disclose this report.”</p>	<p>sure it specifically advises clients to document language choices in accordance with the needs of affected stakeholders. Management proposes to review this recommendation during the Policy review, and include it in the Client Survey and in discussions with civil society.</p>		<p>on the EBRD website.</p> <p>With regards to the project, the Stakeholder Engagement Plan (SEP) that was initially prepared for the Project mainly covered the construction phase. Construction is expected to end this year, with the first commissioning tests being carried during the summer period. GUE has been required to prepare an updated version of the SEP, covering the operation period. The draft version of the revised SEP will be reviewed by ESD. Particular attention will be paid to the appropriate disclosure of specific information of interest for the CSOs and the affected communities.</p> <p>This guidance will be prepared before EBRD 2014 ESP becomes operational on 7 November 2014.</p>	
<p>5. This [requiring ESIA to be in English] would also enable consideration of the documents by EBRD staff not speaking Georgian. Where ESIA documents are prepared in a language which cannot be reviewed by the relevant EBRD staff PCM recommends that</p>	<p>Management proposes to review this recommendation for all ESIA to also be in the Working Language of the Bank during the ESP review and include it in the associated Client Survey. The review of the extent of information to be translated into an EBRD Working Language will</p>	<p>No additional resources needed. ESIA language requirements will be reviewed and amended as part of the ongoing review of ESP.</p>	<p>This issue is still being reviewed and a decision will be taken prior to the 2014 policy going into force in November.</p>	<p>The implementation of this item is in process.</p>

<p>EBRD commission an independent consultant to review the documents against EBRD requirements and that EBRD disclose this report.”</p>	<p>take into consideration the ESP commitment that EBRD’s social and environmental appraisal will be appropriate to the nature and scale of the project, and commensurate with the level of its environmental and social risks and impacts.</p>			
<p><b>B. Recommendations to address the findings of the PCM Compliance Review Report regarding the scope or implementation of the Project</b></p>			<p><b>Update and monitoring</b></p>	
<p>6. “PCM recommends that in addition to effectively monitoring implementation of the Environmental and Social Action Plan EBRD should work with GUE to prepare and disclose a comprehensive annual report which updates the ESIA/ESAP on which consultation can take place and which can inform future HPP developments within Georgia. At a generic level, EBRD should also consider as part of its policy review, how important elements of the environmental and social appraisal which are undertaken after disclosure of the ESIA are made available publicly as they form an important element of third party review of EBRD projects.”</p>	<p>ESP/PR10 requires GUP to keep the ESIA in the public domain throughout the life of the project, and amend it, from time to time, with additional relevant information. GUP is also required to disclose relevant project performance and information to public periodically as well as maintain a constructive relationship with stakeholders on an ongoing basis through meaningful engagement during project implementation. GUP has identified the information to be released to public and the frequency of such disclosure in the Stakeholder Engagement Plan for the project.</p> <p>Management proposes that the Bank will discuss with GUE to agree the specific information to be disclosed to address the issues raised by the CSOs and affected</p>	<p>No additional resources needed. Current client obligation in the financing agreements, which is being monitored by Bank staff. The Bank staff will review the client’s disclosure plans and agree with the client specific information to be disclosed.</p> <p>Disclosure requirements will be reviewed and amended as part of the ongoing review of ESP.</p>	<p>The Stakeholder Engagement Plan (SEP) that was initially prepared for the Project mainly covered the construction phase. Construction is expected to end this year, with the first commissioning tests being carried during the summer period. GUE has been required to prepare an updated version of the SEP, covering the operation period. The draft version of the revised SEP will be reviewed by ESD. Particular attention will be paid to the appropriate disclosure of specific information of interest for the CSOs and the affected communities.</p> <p>The revision of the ESP and PIP has led to a commitment of the Bank to release more information on environmental and social issues. After 7</p>	<p>The implementation of this item is in process.</p> <p>PCM notes the communication in this regard from the Complainant and concerns raised by Green Alternative in regards to the implementation of this recommendation. PCM will continue monitoring implementation of this recommendation and will request an update from the Management and the Complainant on the preparation of the updated SEP.</p>

	<p>communities.</p> <p>Management notes that the ongoing reviews of ESP and Public Information Policy include reviewing disclosure requirements by clients and by the Bank.</p>		<p>November, the Project Summary Documents of new Category A projects will be updated annually on the EBRD website.</p>	
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