

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**PROJECT COMPLAINT MECHANISM  
COMPLIANCE REVIEW MONITORING REPORT I  
BOSKOV MOST HYDRO POWER, REQUEST NUMBER: 2011/05**

**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 two closely related Complaints about the EBRD's Boskov Most Hydro Power project (HPP), 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 Complaints, namely in relation to the Performance Requirement (PR) 6 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 Boskov Most 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 two closely related Complaints from a single Complainant - the non-governmental organisation (NGO) Eko-svest, FYR Macedonia – concerning the Boskov Most HPP Project on 7 November 2011 and 30 December 2011. The Complaints were registered according to the PCM RPs 2009 on 14 November 2011<sup>5</sup> and 10 January 2012<sup>6</sup>.

The Eligibility Assessment found the Complaint eligible for a CR and the Eligibility Assessment Report<sup>7</sup> was publicly released and posted on the PCM website on 14 May 2012.

PCM Expert Dr Owen McIntyre conducted the CR<sup>8</sup> making a finding of non-compliance in respect of one of the grounds set out in the Complaints, determining that the assessment of the Project's potential impacts on biodiversity and living natural resources was not

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

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

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

<sup>5</sup> [www.ebrd.com/downloads/integrity/Boskov\\_complaint\\_7.11.2011.pdf](http://www.ebrd.com/downloads/integrity/Boskov_complaint_7.11.2011.pdf)

<sup>6</sup> [www.ebrd.com/downloads/integrity/Boskov\\_additional\\_complaint\\_10.01.2012.pdf](http://www.ebrd.com/downloads/integrity/Boskov_additional_complaint_10.01.2012.pdf)

<sup>7</sup> [www.ebrd.com/downloads/integrity/Boskov\\_Most\\_final.pdf](http://www.ebrd.com/downloads/integrity/Boskov_Most_final.pdf)

<sup>8</sup> [www.ebrd.com/downloads/integrity/Boskov\\_CRR.pdf](http://www.ebrd.com/downloads/integrity/Boskov_CRR.pdf)

sufficiently comprehensive and conclusive to satisfy the requirements of PR 6 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 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 received a "Request for follow-up of the action plan regarding the PCM Compliance Review Report for the Boskov Most project" from the Complainant (NGO Eko-svest) and NGO Front 21/42 also from FYR Macedonia in June 2014. They raised concerns in relation to the implementation of Recommendation B(1) (as per table below). Namely the NGOs drew PCM's attention to alleged deficiencies in the bio-monitoring study and described the correspondence in this regard between themselves and the consultant who prepared the study. In conclusion they stated that "...the consultant, ELEM and the EBRD have not shown good will to take into account and incorporate civil society organisations' (CSOs) valid comments into the bio-monitoring survey report" and expressed a doubt on the extent to which the Bank actually implemented this commitment.

This report is prepared with consideration of the comments from the Complainants. The Management also took into account the Complainants' comments when preparing an update on the MAP implementation.

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.

## BOSKOV MOST 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>1). Development of detailed guidance on the minimum requirements for the preparation of biodiversity assessments for projects likely to have a significant effect on natural, critical or protected habitats, providing, <i>inter alia</i>:</p> <p>a). Best practice regarding the setting out of conclusive and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed Project on the integrity of the site concerned.</p> <p>b). Best practice regarding the preparation and reporting of a biodiversity assessment separately from the general ESIA or in a manner clearly identified and distinguishable within the ESIA.</p>	<p>Management believes that there are many good sources of guidance currently available on biodiversity assessment which collectively cover and define best practices that the Bank can rely on. These include guidance on both the setting out of conclusive and definitive findings and conclusions as well as the preparation and reporting of a biodiversity assessment, for example in accordance with the EU Environmental Impact Assessment Directive and Habitats Directive.</p> <p>Management proposes that the Environment and Sustainability Department (ESD) will review such guidance during the on-going review of the ESP, including Performance Requirement 6, and identify appropriate guidance that will be</p>	<p>No additional resources needed. Identification of appropriate guidance 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. A guidance note for PR6 will be prepared with the help of independent biodiversity experts. The ToR has been prepared and the guidance note is expected to be completed by the year end.</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>

	made available and applied to relevant assessments.			
c). Practical guidance on the scope of the very limited flexibility as regards the exhaustiveness of such a biodiversity assessment likely to be acceptable for the approval of a Project under the so-called “D1 exception”.	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. 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 contingencies relating to further environmental and social appraisal when their approval is sought.	No additional resources needed. Internal operational procedures will be refined in 2014, following Board approval of the revised ESP.	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.	
d). Where the so-called “D1 exception” is employed, fully transparent procedures for decision-making on disbursement of funds subject to subsequent satisfaction of contractual conditions relating to further biodiversity assessment.	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	No additional resources needed. Internal operational procedures and ESD’s internal guidance for preparing PSD Environmental Impact Sections will be	Following the policy approval, a number of procedures and guidance documents are now being revised.  The 2014 ESP includes article 41, which clarifies that the Board is able to agree some	

	<p>such decisions. In such cases where further environmental and social appraisal is required as a condition of disbursement, ESD must deem the relevant disbursement conditions having been satisfied before disbursement can take place.</p> <p>Management proposes:</p> <ul style="list-style-type: none"> <li>• to amend internal operational procedures to clarify the decision making process and documentation of such decisions;</li> <li>• 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; and</li> <li>• that for projects with disbursement/ implementation requirements contingent upon further environmental and social appraisal, the Bank's Project Summary Documents (PSDs) disclosed on <a href="http://www.ebrd.com">www.ebrd.com</a> will explicitly identify these requirements. PSDs will be updated as needed to disclose information</li> </ul>	<p>amended in 2014, following Board approval of the revised ESP.</p>	<p>elements of appraisal post-Board, and this will be reflected in guidance:</p> <p>41. EBRD's Board of Directors has the discretion to agree, as a condition to EBRD financing, that certain elements of environmental and social appraisal take place following Board approval and after the signing of the financing agreements. The Board will consider the overall impacts, risks and benefits of the proposed approach. Where a project has been approved subject to such conditions, the Project Summary Document will include a description of the approach.</p> <p>In addition, 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>	
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	<p>on subsequent environmental and social appraisals and associated contingent disbursement decisions. Internal ESD guidance notes on the preparation of the environmental and social sections of PSDs will be updated to reflect this commitment.</p>			
<p>e). Practical guidance on the use of the exception, outlined under PR 6.12 and corresponding with Article 6(4) of the EU Habitats Directive, permitting approval, for imperative reasons of overriding public importance, of a Project which a biodiversity assessment has determined to be unavoidably likely to adversely impact the ecological integrity of the site concerned.</p>	<p>The EBRD Board of Directors has the ability to decide to waive or defer the application of the Environmental and Social Policy (ESP)/PR requirements in their decision-making process as outlined in the section 30 of the 2008 ESP. However, an exception for the imperative reasons of overriding public interest (IROPI) as provided for in the Habitats Directive is not applicable to EBRD as an international financial institution. The IROPI is an administrative decision to be adopted by a competent national authority of an EU Member State in respect of the permitting of a project. Therefore, Management considers this recommendation does not fully reflect the Bank's role as an international financial institution and does not propose any action in response to it.</p>	<p>No additional action or resources proposed.</p>	<p>Not applicable.</p>	<p>PCM notes the Management's position that no further actions were required on this matter. PCM will therefore not continue its monitoring of this item.</p>

<b>B. Recommendations to address the findings of the PCM Compliance Review Report regarding the scope or implementation of the Project</b>			<b>Update and monitoring</b>	
<p>1). Though the Compliance Review Expert has concluded that the Bank was not in full compliance with the ESP as regards the assessment of the biodiversity impacts of the present Project, it is only necessary in the present case to recommend that the mitigation measures identified in the ESAP, and any further measures arising under the due process of national law, are rigorously implemented. The reasonably comprehensive desk-based studies undertaken and the complete suite of mitigation measures stipulated ought to be sufficient to ensure the effective application of the requisite standards of protection of biodiversity resources in the present case.</p>	<p>Management considers that the preparation of a satisfactory biodiversity study was appropriately established in this project as a condition precedent for disbursements under the EBRD loan. The results of the Environmental and Social Action Plan (ESAP)-required additional bio-monitoring programme have been disclosed and discussed with relevant CSOs. The four seasons' bio-monitoring was required to verify earlier conclusions contained in the Environmental and Social Impact Assessment (ESIA) regarding the project's limited and temporary impacts on biodiversity, and to strengthen mitigation measures, if needed. To satisfy the Bank's conditions precedent for disbursement and ensure effective protection of biodiversity resources, all necessary refinements to the project design and mitigation measures taking into consideration sound scientific advice from the CSOs will be introduced to address the findings and conclusions of the additional bio-monitoring programme.</p>	<p>No additional action or resources needed. Current commitment in project documentation.</p> <p>Resources include normal monitoring resources for Bank staff to review outputs of bio-monitoring and measures to address its findings, undertake site visits and monitor project reporting.</p>	<p>The condition precedent (CP) has not yet been satisfied. The project implementation has been delayed due to a number of factors including delays encountered in the tendering and procurement process. EBRD and ELEM will continue liaising with IUCN network and other biodiversity experts to take into consideration sound scientific advice from the CSOs to finalise the biodiversity assessment and mitigation and monitoring plans.</p>	<p>The implementation of this item is in process.</p> <p>PCM notes the reasons for the delays in the implementation of this recommendation. PCM will continue monitoring and request an update from the Management for the next Monitoring Report.</p> <p>PCM also takes note of the comments provided by the Macedonian NGOs Eko-svest (the Complainant) and Front 21/42, about the adequacy and correctness of the bio-monitoring study and how CSOs' comments, which include contributions from environmental experts, were taken into consideration. PCM will request an update on this point from the Complainant for the next Monitoring Report.</p>



<p>2). In ensuring implementation of the mitigation measures stipulated in the ESAP, the Bank should have regard to the outcome of the ongoing revalorization of the Mavrovo National Park by the Ministry of Environment and Physical Planning and any new or additional management goals established thereby.</p>	<p>Management continues to monitor the Park’s planning process closely. The revalorisation process has been completed, with no change to the previous “sustainable use” zoning of the area to be affected by the HPP; “sustainable use” is considered to include hydropower development. A draft Management Plan has also been completed and disclosed by authorities; on-going monitoring shows that the HPP project does not conflict in any way with draft plans, nor would construction and operation of the HPP.</p> <p>EBRD will continue to monitor the Mavrovo National Park revalorisation, zoning and management planning, and take the necessary actions to amend the project ESAP, mitigation measures and the project monitoring programme, as needed.</p>	<p>No additional action or resources needed. Included in normal monitoring of this type of a project.</p>	<p>EBRD met with the Mavrovo NP management in May 2014 to clarify the current status of the revalorisation process and reviewed the finalised studies and proposals that are currently being considered by FYR Macedonian parliament. The outcomes of the revalorisation studies have also been taken into consideration in the annual pre-construction Biodiversity Survey, which has proposed additional mitigation measures.</p>	<p>The implementation of this item is in process.</p> <p>PCM will continue monitoring implementation of this recommendation and will request an update from the Management and the Complainant for the next Monitoring Report.</p>
<p><b>D. Monitor and report on the implementation of any recommended changes</b></p>			<p><b>Update and monitoring</b></p>	
<p>1). 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</p>	<p>Management will monitor the implementation of the various recommendations proposed above and report to the PCM Officer in accordance with the PCM Rules of Procedure every six months until issues are closed.</p>	<p>No additional action or resources needed. Bank staff will cooperate with the PCM officer’s preparation of the bi-annual reporting on</p>	<p>This is the first bi-annual update on the Management commitments.</p>	<p>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</p>

these tasks and agreed with relevant Bank officials and the PCM Officer.		Action Plan until items are closed.		these reports fully.
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