

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

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

March 2015¹

¹ The report is prepared based on the update on the Management Action Plan received in January 2015.

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 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 second CR Monitoring Report for the Boskov Most HPP project. The report is prepared based on the update on the MAP received from the Bank's Management in January 2015 and reflects the status of implementation at the time. The next report will be published around June 2015.

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 2011⁵ and 10 January 2012⁶.

The Eligibility Assessment found the Complaint eligible for a CR and the Eligibility Assessment Report⁷ was publicly released and posted on the PCM website on 14 May 2012.

PCM Expert Dr Owen McIntyre conducted the CR⁸ 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 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.

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

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

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

⁵ www.ebrd.com/downloads/integrity/Boskov_complaint_7.11.2011.pdf

⁶ www.ebrd.com/downloads/integrity/Boskov_additional_complaint_10.01.2012.pdf

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

⁸ www.ebrd.com/downloads/integrity/Boskov_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 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.

Update by the EBRD Management and implementation status - summary

Three recommendations were considered to not require further monitoring from the PCM on completion of the previous Monitoring Report. These items were closed and are not included in the current Monitoring Report.

Implementation of five remaining PCM Recommendations was assessed by the PCM Officer for this Monitoring Report.

- I. The following documents were prepared or will be prepared following the adoption of the new Environmental and Social Policy in May 2014:
 - A Guidance Note for PR6 of the ESP – currently being finalised with an independent consultant.
 - Revised Environmental and Social Procedures – pending review by the Bank’s senior Management.
 - Guidance for the implementation of the Public Information Policy 2014.
 - ESD’s internal guidance note for preparing the environmental and social contents of PSDs which includes information on subsequent environmental and social appraisals and associated contingent disbursement decisions.
 - Internal operational procedures about circumstances for deferred appraisal and how to document these decisions – to be prepared later in 2015.
 - Internal procedures for decision making process for disbursement of funds subject to satisfaction of contractual conditions relating to further biodiversity assessments – to be prepared later in 2015.
 - ESD’s internal guidance note for preparing environmental and social information for Board documents which includes information on conditions relating to further environmental and social appraisal as a condition of disbursement – to be prepared later in 2015.

The PCM Officer requested from the Management the above listed documents and will request those scheduled to be prepared later in 2015. The PCM will review them in

preparation of the next or the following Monitoring Report. If no further questions and/or comments arise, these items of the monitoring will be closed.

- II. As regards the PCM recommendations in the scope of this specific project, the Management states that “the Client has undertaken an additional Biodiversity Survey which is being finalised by ELEM and its external experts. The aim of this final review is to address the comments received from CSOs and IUCN expert network organisations and to satisfy the Bank’s requirements. A number of further hydrology and biodiversity studies as well as further consultation meetings with CSOs, including the Complainants, and other interested parties regarding these studies will be required to be completed before the disbursement of the loan and/or start of construction”.

The PCM Officer noted the delays in the project implementation due to a number of factors including delays encountered in the tendering and procurement process and that no disbursement of EBRD loan has taken place to date. The PCM will continue monitoring EBRD’s oversight of ELEM’s communication with the CSOs and will seek comments from the Complainants regarding the revised Biodiversity Study and consultation with the CSOs.

- III. The EBRD remains in close communication with the management of the Mavrovo National Park and the Ministry of Environment and Physical Planning on the progress with the revalorisation process.

The PCM Officer will continue to monitor the Bank’s environmental monitoring of the project, including the developments around the revalorisation of the Mavrovo National Park.

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

Update by the EBRD Management and implementation status

PCM Recommendation 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, *inter alia*:

- 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.**
- 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.**

Management Response

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.

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 made available and applied to relevant assessments.

Resources/Timetable

No additional resources needed. Identification of appropriate guidance in 2014, following Board approval of the revised ESP.

Management's Progress Report - July 2014

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.

Management's Progress Report - January 2015

A guidance note for the PR6 is currently being finalised with an independent consultant. It will clarify how the relevant EU directives are interpreted for the purposes of undertaking biodiversity assessments under PR 6 and 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 GN will be rolled out in the first half of 2015 to Bank staff and our clients. This will be accompanied by internal training for ESD.

The final GN will be disclosed on the EBRD website.

PCM comments on implementation - March 2015

The PCM will request the Guidance Note for PR 6 from the Management. It will be reviewed before the next Monitoring Report and, if no further questions and/or comments arise, this item of the monitoring will be closed.

PCM Recommendation 2

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 Response

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 obligation 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.

Resources/Timetable

No additional resources needed. Internal operational procedures will be refined in 2014, following Board approval of the revised ESP.

Management’s Progress Report - July 2014

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.

Management’s Progress Report - January 2015

The following text has been included in the 2014 ESP: “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.”

The revised and updated Environmental and Social Procedures are pending management review and will be finalised in 2Q 2015.

Internal operational procedures about circumstances for deferred appraisal, along with how to document these decisions etc. will be drafted in the first half of 2015.

PCM comments on implementation - March 2015

The PCM will request the revised Environmental and Social Procedures and will request the internal procedures for deferred appraisal. These documents will be reviewed before the next Monitoring Report and, if no further questions and/or comments arise, this item of the monitoring will be closed.

PCM Recommendation 3

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.

Management Response

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, 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;
- 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
- 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. Internal ESD guidance notes on the preparation of the environmental and social sections of PSDs will be updated to reflect this commitment.

Resources/Timetable

No additional resources needed. Internal operational procedures and ESD’s internal guidance for preparing PSD Environmental Impact Sections will be amended in 2014, following Board approval of the revised ESP.

Management’s Progress Report - July 2014

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 elements of appraisal post- Board, and this will be reflected in guidance:

“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.”

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.

Management’s Progress Report - January 2015

- Internal procedures will be revised in the first half of 2015 to clarify the decision making process of disbursement of funds subject to satisfaction of contractual conditions relating to further biodiversity assessment and documenting such decisions.
- ESD’s internal guidance note for preparing environmental and social information for the Board document will be updated in the first half of 2015 to include information on conditions relating to further environmental and social appraisal as a condition of disbursement.
- ESD’s internal guidance note for preparing the environmental and social contents of the PSD has been updated to include information on subsequent environmental and social appraisals and associated contingent disbursement decisions.
- The guidance for the implementation of the 2014 PIP has been prepared.

PCM comments on implementation - March 2015

For the next Monitoring Report the PCM will request:

- **the internal procedures for decision prior to disbursement;**
- **the internal guidance for preparing Board documents;**

The PCM requested:

- **the internal guidance for preparing PSDs;**
- **the guidance for the implementation of the Public Information Policy 2014.**

These documents will be reviewed by the PCM before the next Monitoring Report and, if no further questions and/or comments arise, this item of the monitoring will be closed.

PCM Recommendation 4

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.

Management Response

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.

Resources/Timetable

No additional action or resources needed. Current commitment in project documentation.

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.

Management's Progress Report - July 2014

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.

Management's Progress Report - January 2015

The project implementation has been delayed due to a number of factors including delays encountered in the tendering and procurement process and no disbursement of EBRD loan has taken place to date.

To date, ELEM has undertaken an additional Biodiversity Survey of the project area. The additional Biodiversity Survey report is being amended and finalised by ELEM and its external experts to address the comments received from CSOs and IUCN expert network organisations and satisfy the Bank's requirements. A number of further hydrology and biodiversity studies as well as further consultation meetings with the CSOs and other interested parties regarding these studies are required to be completed before the disbursement of the loan and/or start of construction.

PCM comments on implementation - March 2015

The PCM notes the delays in the project implementation. The PCM will continue monitoring the implementation of this item and will seek comments from the Complainants regarding the revised Biodiversity Study and ELEM's consultation with

the CSOs.

PCM Recommendation 5

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.

Management Response

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.

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.

Resources/Timetable

No additional action or resources needed. Included in normal monitoring of this type of a project.

Management's Progress Report - July 2014

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.

Management's Progress Report - January 2015

EBRD met with the Mavrovo NP management and the Ministry of Environment and Physical Planning in September 2014 to clarify the status of the revalorisation process. ELEM and EBRD will remain in close communication with the National Park authorities to take into consideration any relevant new or additional management goals for the Mavrovo NP in the project.

PCM comments on implementation - March 2015

The PCM Officer will continue to monitor the Bank's environmental monitoring of the project, including the developments around the revalorisation of the Mavrovo National Park and will regularly seek comments from the complainant on the process.