

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

**PROJECT COMPLAINT MECHANISM
COMPLIANCE REVIEW MONITORING REPORT II
OMBLA HYDROPOWER PROJECT, REQUEST NUMBER: 2011/06
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 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 comments,⁴ 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 Ombla HPP project. The report is prepared based on the update on the Management Action Plan 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 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 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

Two 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. Also, as the Project was terminated, there are no recommendations as regards to the scope of implementation of the Project.

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

The following documents were prepared or will be prepared following the adoption of the new Environmental and Social Policy in May 2014:

- 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.
- 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.

The PCM Officer requested or will request from the Management the above listed documents and will review them in preparation of the next and following Monitoring Reports, as appropriate. If no further questions and/or comments arise, these items of the monitoring will be closed.

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 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

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 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 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 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.

Management's Progress Report - January 2015

The following text was 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."

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 internal operational procedures for deferred appraisal. These 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.

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

PCM Recommendation 2

**Where, due to exceptional circumstances, project approval is unavoidably required in advance of completion of the requisite environmental and social appraisal:
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;**

Management Response

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.

Resources/Timetable

No additional resources needed.

Internal operational procedures will be revised 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 revised and updated Environmental and Social Procedures are pending management review and will be finalised in 2Q 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.

PCM comments on implementation - March 2015

The recommendation is partially implemented with the adoption of the revised ESP.

The PCM requested the revised Environmental and Social Procedures and will request the internal procedures on decision making process of disbursement of funds. These 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

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.

Management Response

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.

Resources/Timetable

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.

Management's Progress Report - July 2014

Following the policy approval, a number of procedures and guidance documents are being revised.

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.

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.

Management's Progress Report - January 2015

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

The PCM requested the Guidance Notes for PSDs and the Public Information Policy from the Management. These documents will be reviewed by the PCM before the next reporting period and, if there are no further comments, this item of the monitoring will be closed.