



Project
Complaint
Mechanism

Ombla Hydropower Project

REQUEST NUMBER: 2011/06

Compliance Review Monitoring Report V – November 2016

The Project Complaint Mechanism (PCM) is the independent accountability mechanism of the EBRD. PCM provides an opportunity for an independent review of complaints from one or more individual(s) or organisation(s) concerning an EBRD project, which allegedly has caused, or is likely to cause harm. PCM may address Complaints through two functions: Compliance Review, which seeks to determine whether or not the EBRD has complied with its Environmental and Social Policy and/or the project-specific provisions of the Public Information Policy; and Problem-solving, which has the objective of restoring a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault. Affected parties can request one or both of these functions.

For more information about PCM, contact us or visit www.ebrd.com.

Contact information

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<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism.html>

How to submit a complaint to the PCM

Complaints about the environmental and social performance of the EBRD can be submitted by email, telephone or in writing at the above address, or via the online form at:

<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/submit-a-complaint.html>

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NOTE: Unless otherwise defined, capitalised terms used in this Compliance Review Monitoring Report refer to terms as defined in the PCM Rules of Procedure.

Executive summary

This is the fifth Compliance Review (CR) Monitoring Report of the Project Complaint Mechanism (PCM) regarding the Complaint on Ombla Hydropower Project. Following a review of the Bank's compliance with its 2008 Environmental and Social Policy, the PCM Compliance Review Expert determined a finding of non-compliance on one of the five grounds raised in the Complaint, namely in relation to Performance Requirement (PR) 6 of the EBRD's 2008 Environmental and Social Policy (ESP). EBRD Management subsequently prepared a Management Action Plan in response to the recommendations outlined in the Compliance Review Report.¹

During this fifth monitoring period, the PCM Officer reviewed the update provided by EBRD Management on implementation of the Management Action Plan as well as related documentation.

The PCM Officer takes note of the actions undertaken by Management to fulfil the commitments outlined in the Management Action Plan, and considers Actions 1, 2 and 3 have been completed.

¹ The Complaints, Compliance Review Report and Management Action Plan are available on the [PCM Register](#).

1. Introduction

This Compliance Review Monitoring Report is prepared pursuant to the 2009 PCM Rules of Procedure² whereby, pursuant to a finding of non-compliance, the PCM Officer is mandated to monitor the implementation of the recommendations³ of a Compliance Review Report subject to the timetable and estimate of human and financial resources as set in the Management Action Plan. PCM monitors the implementation of recommendations of Compliance Review Reports, and prepares Monitoring Reports at least biannually or until the PCM Officer determines that the implementation issues are concluded. Monitoring Reports are submitted to the President and Board, and then published in the PCM Register on the EBRD website.

PCM reviewed a Complaint about the EBRD's Ombla HPP Project 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 Performance Requirement (PR) 6 of the EBRD's 2008 Environmental and Social Policy (ESP). The Compliance Review Report included recommendations to address the findings of non-compliance, in response to which EBRD Management prepared a Management Action Plan (available on the [PCM Register](#) on the EBRD website).

This is the fifth Compliance Review Monitoring Report regarding the EBRD's Ombla Hydro Power Project.

² The Complaint was registered, reviewed and will continue to be processed in accordance with the 2009 PCM Rules of Procedure.

³ Pursuant to the PCM Rules of Procedure a Compliance Review Report will include 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.

2. Context

On the 17th November 2011 the Project Complaint Mechanism (PCM) received a complaint from Mr Enes Cerimagić of Friends of the Earth, Croatia regarding the Ombla HPP hydroelectric Project in Croatia. The Complainant claimed that the Project was likely to cause harm and that EBRD has failed to comply with the relevant EBRD's 2008 Environmental and Social Policy (ESP) on a total of five grounds.

First of all, it contended that the Bank, in its appraisal of the Project's environmental risks, has relied upon an outdated EIA from 1999 which is no longer valid under the applicable Croatian law, thus amounting to a breach of PR 1.5, PR 1.9 and PR 6.15 of the ESP. Secondly, the Complaint alleged that the Bank failed to ensure that meaningful public consultation took place, as required under the Aarhus Convention, Croatian law and the ESP. Thirdly, the Complaint alleged that the Bank has violated the requirements of the ESP by approving the Project without first having carried out a biodiversity assessment concluding that it will not adversely affect the integrity of those areas proposed for designation as Natura 2000 sites, despite the agreement of contractual conditions requiring satisfactory completion of such an assessment before distribution of funds would take place. Fourthly, the Complaint alleged that the Bank failed to ensure that the "critical habitats" potentially affected by the Project did not have to be converted or degraded unless strict conditions specified in the ESP have been satisfied in accordance with the precautionary approach. Finally, the Complaint alleged that the Bank's approval of the Project in the absence of a strategic environmental assessment of the 2008 Croatian National Energy Strategy or the relevant special planning policies constituted a breach of its obligations under the ESP.

The PCM commissioned an eligibility assessment of the complaint based on the eligibility criteria in the rules of procedure. On 12 July 2012 the Eligibility Assessment Report was publicly released, declaring the Complaint eligible and warranting a Compliance Review. PCM Expert Mr. Graham Cleverly was appointed as the Compliance Review Expert for the Complaint.

The PCM review has included a review of public domain project information, EBRD internal documents and Bank correspondence. A site visit to the project location in Croatia has been undertaken by the Compliance Review Expert accompanied by the PCM Officer in July 2012. Separate meetings took place with representatives of the Client and with the Complainant and other stakeholders from Croatia. A meeting with Bank staff and Consultants has been held in August 2012 at EBRD Headquarters in London.

Therefore, the Compliance Review Expert has made a finding of non-compliance in respect of one of the grounds set out in the Complaint. The Compliance Review has determined that the Bank's approval of the Project in advance of the completion of a conclusive biodiversity assessment amounts to non-compliance with the requirements of Performance Requirement 6 of the 2008 ESP.

EBRD Management was requested to prepare a Management Action Plan, including a timetable and estimate of the human and financial resources required to implement the recommendations considered appropriate. The Management Action Plan included actions to address the recommendations at the level of EBRD systems and procedures as well as actions to address the recommendations connected with activities at the project level. The Complainants submitted comments on the Management Action Plan. The final Compliance Review Report and

Complainants' comments were submitted for information to the EBRD's Board of Directors, along with the Management Action Plan, which was submitted for acceptance. The Board accepted the Management Action Plan and the Compliance Review Report, Management Action Plan and Complainants' comments were publicly released on 2 January 2014.

3. Current monitoring period

The PCM Officer reviewed an implementation update on the Management Action Plan regarding the Ombla Hydropower Project for February 2016-July 2016 which was provided by the Bank Management to the PCM in September 2016. Under the current monitoring period, the Management highlights that the EBRD PR6 Guidance Note has been disclosed on the EBRD website. Also, the internal guidance on approach to deferred appraisals has been approved and is being implemented by the Management.

Documents reviewed by the PCM provided by Management referenced in the implementation update, namely:

- Disclosure of EBRD PR6 Guidance Note on the EBRD website: <http://www.ebrd.com/environment/pdf-guidance-note-ebrd-performance-requirement-6.pdf>
- Internal Guidance on Approach to Deferred Appraisals.

The PCM Officer also invited Complainants to provide their comments regarding Management's implementation of the Management Action Plan. No comments were received from the Complainants during this monitoring cycle.

4. PCM observations

In light of information received to date, and in accordance with the scope of the PCM Officer's monitoring role, the PCM Officer has made a number of observations regarding implementation of the Management Action Plan (MAP) on Ombla Hydropower Project.

In the discussion below the Compliance Review recommendations are provided, along with the related action item(s) drawn from the MAP. The PCM's comments are also provided.

The Compliance Review Expert made a series of recommendations concerning the 2008 Environmental and Social Policy and related procedures. EBRD Management committed to undertaking a number of actions in the MAP to address the recommendations considered appropriate.

MAP actions 1, and 3 were completed in previous update reports, with the exception of Action 2. In this fifth MAP update report, with the disclosure of EBRD PR6 Guidance Note on the EBRD website and the approval of the guidance note for ESD on differed appraisal, PCM considers that Action 2 does not require further monitoring.

PCM Recommendation 1	Implementation update
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. ⁴	A memo has been approved by the ESD management to clarify the deferred appraisal approach and circumstances and documentation of such decisions, which has been included in the Assurance Framework. Guidance for preparing environmental and social sections of the Board documents and Project Summary Documents has been approved by the ESD management, which provides guidance on enhanced information to be included on circumstances and contingencies relating to further environmental and social appraisal.
PCM comments	PCM determined in March 2016 that no further monitoring of this item will be necessary.

PCM Recommendation 2	Implementation update
Where, due to exceptional circumstances, project approval is unavoidably required in advance of completion of the requisite environmental and social appraisal. <ul style="list-style-type: none">- 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;- Development of formal procedures to ensure full transparency in relation to the fact that a project has received Bank approval with disbursement of funds subject to subsequent satisfaction of contractual conditions relating	<ul style="list-style-type: none">- The procedure to clarify the decision-making process of disbursement of funds subject to satisfaction of contractual condition relating to further biodiversity assessment for the Environmental and Sustainability Department has been updated to clarify that any requests for disbursement for a project that has been granted a deferred appraisal needs to be reviewed and approved by the ESD Assurance Committee, which is comprised of senior level management.- A guidance note for ESD on environmental and social information to be included in the Board documents and PSDs has been approved and

⁴ Some Recommendations cover more than one topic, so have been separated by row so that the management response can address each specific issue.

to further environmental and social appraisal, and in relation to decision-making on such disbursement.

included in the Assurance Framework. Management requests this issue be closed.

PCM comments PCM notes the disclosure of PR6 Guidance note and the approval of the guidance note on deferred appraisal. PCM considers that no further monitoring of this item will be necessary.

PCM Recommendation 3

Implementation update

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.

Guidance on preparing the environmental and social contents of PSDs were fulfilled in 2014, as was the Public Information Policy implementation guidance on Project Summary Documents.

PCM comments PCM determined in September 2015 that no further monitoring of this item will be necessary.

5. Conclusions and next steps

The PCM Officer has determined that Actions 1 and 3 have been completed under previous monitoring reports. In this fifth MAP update report, the Bank Management has reported on efforts undertaken by the Bank in relation with the publication of the PR6 Guidance note and the internal guidance approach to deferred appraisals and decided on closing Action 2 as well. The PCM Officer has determined that all actions have been completed by the Bank Management and that no further monitoring of the Ombla Hydro power Project Complaint is required.