

EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement Projects

REQUEST NUMBER: 2013/03

Compliance Review Monitoring Report I - July 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 first Compliance Review Monitoring Report of the Project Complaint Mechanism (PCM) regarding two Complaints received in respect of a number of EBRD-funded Projects with the Serbian state electrical company, EPS. Following a review of the Bank's compliance with its 2008 Environmental and Social Policy, the PCM Compliance Review Expert determined four grounds of non-compliance. EBRD Management subsequently prepared a Management Action Plan in response to the recommendations outlined in the Compliance Review Report.¹

During this first 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, 6, 7, 8, 10, 12, 13, 17, 18, 19 and 20 have been completed. The PCM Officer will continue to monitor implementation of Actions 2, 3, 4, 5, 9, 11, 14, 15, 16 and 21. The next monitoring report is expected to be issued in December 2016.

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 two closely related Complaints about the EBRD's EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement Projects (EPS Projects), completing a Compliance Review process in mid-2015. The Compliance Review Expert made a finding of non-compliance on several grounds raised in the Complaints, namely in relation to Performance Requirements 1, 3, 5 and 10 of the EBRD's 2008 Environmental and Social Policy. 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 first Compliance Review Monitoring Report in respect of the two Complaints received in respect of a number of EBRD-funded Projects with the Serbian state electrical company, EPS.

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

Two substantively similar Complaints were received by PCM in 2012 and 2013 regarding the activities of Serbia's state-owned electricity company, Public Enterprise Elektroprivreda Srbije (EPS), at the Kolubara mining basin.⁴ The Complaints primarily concerned the Kolubara Environmental Improvement (KEI) Project, for which EBRD approved financing on 26 July 2011. The KEI Project consists of a substantial investment in EPS' lignite basin, comprising installation of a coal management system to analyse quality of the excavated coal; installation of a spreader system in the Tamnava West field to allow for separation and handling of the mined lignite; and consultancy support for procurement and implementation. The KEI Project was assigned Category A, and assessed and structured in accordance with the Bank's 2008 Environmental and Social Policy.

An Eligibility Assessment was conducted for each Complaint, and both were found eligible for a Compliance Review. In accordance with the PCM Rules of Procedure, the Complaints were joined for the purposes of Compliance Review. Mr Glen Armstrong undertook *an ad hoc* appointment to carry out the Compliance Review. The Compliance Review consisted of a review of documentation, meetings with the Complainants, Bank staff and Client, and a site visit to Lazaverac and Vreoci in October of 2013.

The Compliance Review Expert determined four grounds of non-compliance, namely:

- EBRD was non-compliant in its application of the Environmental and Social Policy general requirements and the requirements of Performance Requirement 1, in determining the scope of its environmental and social due diligence on the KEI Project.
- EBRD was non-compliant with the general commitments of the Environmental and Social Policy and Performance Requirements 1, 3, 5 and 10 with respect to its exclusion of Vreoci from its due diligence (and application of the Performance Requirements) on the KEI Project.
- EBRD was non-compliant with the general requirements of its Environmental and Social Policy and the specific requirements of Performance Requirement 3 with respect to the assessment of greenhouse gas emissions on the KEI Project.
- That whilst no new strategic assessment was necessary for Kolubara due to the existing strategic information available, EBRD should have been more strategic itself in how it applied that information to its due diligence on the KEI Project and the conditionality and requirements therefore placed upon its client, reinforcing non-compliance finding (1) above.

The Compliance Review Expert made recommendations relating to the interpretation of the Environmental and Social Policy consistent with the concerns identified in the Compliance Review. In particular, recommendations were made to clarify certain aspects of the Policy, as well as underlying guidance and procedures. Recommendations were also made on how EBRD might

⁴ Refer to the [PCM Register](#) for more information.

bridge the gap between the due diligence it undertook for the KEI Project, and the standard deemed appropriate by the Compliance Review Expert.

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 Kolubara basin. 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 on 26 October 2015. The Relevant Parties were subsequently informed, and the Compliance Review Report, Management Action Plan and Complainants' comments were publicly released thereafter.

3. Current monitoring period

The PCM Officer reviewed an implementation update on the Management Action Plan regarding the EPS Projects for the November 2015-April 2016 period, which was provided by EBRD Management and is dated May 2016. As indicated in the Management Action Plan, Management considers that many of the recommendations were adequately addressed with the 2014 revision of the Environmental and Social Policy. Further, Management highlights that additional documents have been publicly disclosed by EBRD and/or EPS. Management has also indicated that commitments made by EPS in respect of a new corporate restructuring loan are expected to alleviate concerns at the Kolubara basin, in particular relating to resettlement and stakeholder engagement.

The PCM Officer has also reviewed several specific documents provided by Management referenced in the implementation update, namely:

- Standard terms of reference for corporate environmental and social due diligence
- Relevant provisions of the Public Information Policy implementation guidelines for Bank staff
- Country strategy guidance on the development and approval processes
- Back to office report from the monitoring visit to the Kolubara basin dated March 2016
- Draft guidance to staff on the environmental and social section of project documentation submitted for the final stage of the internal management review and to the Board of Directors.

The PCM Officer also invited Complainants to provide their comments regarding Management's implementation of the Management Action Plan. The PCM Officer has had discussions with the Complainants, although no written comments were received during this monitoring period.

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 regarding the EPS Projects.

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

4.1 Recommendations in the Compliance Review Report to address the findings of non-compliance at the level of EBRD systems or procedures

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.

4.1.1 Appraisal generally

The Compliance Review Expert made a number of recommendations relating to the appraisal process generally, particularly in the case where the Bank has been involved in multiple investments in a single client; and where a client occupies a dominant position within a sector or region and where its approach and practices have broader socio-economic or environmental impacts.

Action 1

Implementation update

Under the revised (2014) Environmental and Social Policy, the Bank reviews the environmental and social performance of projects and commitments in legal documentation, for which remedial measures may be agreed with the client in the case of a failure to comply (paragraphs 43-44 of the Policy).

The revision of the Environmental and Social Policy has been in effect since 7 November 2014.

Management requests that this action item be closed.

PCM comments The action item has been completed. PCM considers no further monitoring is required.

Action 2

Implementation update

For follow-on projects with existing clients, corrective measures for addressing areas of material non-compliance may be set as conditions precedent for disbursements or as covenants connected with a new project, for example by including remedial measures to address any outstanding Environmental and Social Action Plan (ESAP) actions in the new ESAP.

Management confirms that guidance is being developed and will be set out in relevant documentation.

PCM comments PCM takes note of the progress made on this action item and will continue to monitor implementation during the next monitoring period.

Action 3**Implementation update**

A summary of a client's compliance with commitments will be included in any submission to the relevant EBRD decision making body with proposed remedial action, where necessary.

Management confirms that guidance is being developed and will be set out in relevant documentation.

PCM comments PCM takes note of the progress made on this action item and will continue to monitor implementation during next monitoring period.

Action 4**Implementation update**

Environmental and social appraisal will identify whether a client occupies a dominant position, having broader socio-economic or environmental impacts that should be addressed through policy dialogue or in EBRD country strategies.

Management considers the requirements in the 2014 Environmental and Social Policy responds to the relevant recommendation. Appraisal identifies strategic level environmental and social issues relating to the client's dominant position within a sector or region, and possible policy dialogue and/or capacity building opportunities. Additional guidance is being developed and will be set out in relevant documentation.

PCM comments PCM takes note of the progress made on this action item and will continue to monitor implementation during next monitoring period.

Action 5**Implementation update**

The environmental and social sections of Board documents will include a summary of the broader socio-economic or environmental impacts resultant from a client's sectoral or regional approaches and propose appropriate technical cooperation and policy dialogue activities to address them. This will form part of the internal management system of the Environment and Sustainability Department (ESD).

A template for the environmental and social content of the project documentation submitted to the final stage of the internal management review and to the Board of Directors is currently being amended to include a summary of the broader socio-economic or environmental impacts resultant from a client's sectoral or regional approaches and propose appropriate technical cooperation and policy dialogue activities to address them. The standards terms of reference for appraisal will also be amended to ensure that regional and sectoral approaches are appropriately considered.

PCM comments PCM takes note of the progress made on this action item and will continue to monitor implementation during the next monitoring period.

Action 6**Implementation update**

EBRD has a robust country strategy process, and each project submitted to the Board of Directors must explain how it meets the strategic priorities in the relevant country strategy.

A guidance note on environmental and social inputs to the country strategy process, including policy or capacity building initiatives, has been developed and included in ESD's internal management system.

Management requests that this action item be closed.

PCM comments The action item has been completed. PCM considers no further monitoring is required.

4.1.2 Project scope considerations

The Compliance Review Expert made a number of recommendations relating to the absence of clarity around a project's "area of influence" and the determination of appraisal and application of Performance Requirements to the area of influence. The Expert also asserted that the determinations of the area of influence and scope of appraisal as agreed with the client should be publicly disclosed.

Actions 7 & 8

Implementation update

Potentially ambiguous terminology used in the 2008 Environmental and Social Policy has been clarified in the 2014 revision. In particular, the scope of applying Performance Requirements to facilities and activities that are associated with, but not part of the project – corresponding to the concept of "area of influence" in the 2008 Environmental and Social Policy – has been clarified. Should any uncertainty with the application of Performance Requirements remain, clarifications will be published on the Bank's website.

The revision of the Environmental and Social Policy has been in effect since 7 November 2014.

Management requests that action items 7 & 8 be closed.

PCM comments

The action items have been completed. PCM considers no further monitoring is required.

Action 9

Implementation update

Guidance documents for external use designed to assist clients and consultants are disclosed on EBRD's website and subject to normal stakeholder engagement in accordance with the Bank's Public Information Policy.

The specific decision point on the release of guidance documents to the public will be included in the terms of reference for the relevant management committee approving the guidance document. Further, in 2016, a number of guidance documents have been disclosed on the EBRD website.

PCM comments

PCM takes note of the progress made on this action item and will continue to monitor implementation during the next monitoring period.

Action 10

Implementation update

Public Information Policy Operational Guidelines for preparing project summary documents (PSDs) will be updated to include instruction to describe clearly the project financed by EBRD.

The Public Information Policy implementation guidelines in the banking operational manual have been updated.

Management requests that this action item be closed.

PCM comments

The action item has been completed. PCM considers no further monitoring is required.

Action 11

Implementation update

Internal guidance for preparing the environmental and social sections of PSDs includes a description of the scope of appraisal, and all PSD draft environmental and social sections will be reviewed as part of ESD's internal management system process.

Description of the scope of environmental and social appraisal has been included in the template for the environmental and social content of the PSDs. This is currently in a pilot phase.

PCM comments

PCM takes note of the progress made on this action item and will continue to monitor implementation during the next monitoring period.

4.1.3 Additional studies to support appraisal

The Compliance Review Expert made a number of recommendations relating to the potential role of sectoral, regional or strategic studies in the appraisal process.

Action 12

Implementation update

EBRD will ensure that due diligence identifies and assesses relevant regional and strategic environmental and social assessments or studies that might affect a project, and that where these are identified and reviewed, they will be included in internal documents and disclosed in PSDs.

Standard terms of reference for environmental and social impact assessment have been prepared, which include a specific task to identify, review and take into consideration any relevant strategic level assessment documentation.

PCM comments The action item has been completed. PCM considers no further monitoring is required.

Action 13

Implementation update

EBRD will identify the need for technical cooperation and policy dialogue to support strategic assessments in the country strategy process.

A guidance note on environmental and social inputs to the country strategy process, including the need for technical cooperation and policy dialogue to support strategic assessments has been developed and forms part of ESD's internal management system.

PCM comments The action item has been completed. PCM considers no further monitoring is required.

4.1.4 Greenhouse Gas (GHG) emissions analysis and guidance

The Compliance Review Expert asserted that EBRD GHG analysis and guidance should be improved.

Actions 14, 15 & 16

Implementation update

EBRD will update and disclose guidance on GHG assessment, and such revised guidance will be applied to all EBRD investments by Q2 2016; information on the scope and scale of project-specific GHG assessments will be disclosed in PSDs.

The guidance is currently being prepared, and will reflect the provisions of the 2014 Environmental and Social Policy and the sector guidance notes on renewable energy, energy efficiency and transport that were published by the IFI working group on GHG assessment in December 2015. A requirement to include details of the GHG impact of projects, where this is greater than 25Kt CO₂e per year, has been included in the template for the environmental and social content of PSDs.

PCM comments PCM takes note of the progress made on these action items and will continue to monitor implementation during the next monitoring period.

4.2 Recommendations in the Compliance Review Report to address the findings of non-compliance in the scope or implementation of the project

The Compliance Review Expert made a number of recommendations regarding EBRD's engagement with EPS, in particular as relating to environmental and social considerations at the Kolubara basin.

4.2.1 The Compliance Review Expert recommended that EBRD should commission a review with EPS of future environmental, social and energy investment strategy for the Kolubara basin, taking into account EBRD's energy strategy and Serbia country strategy, as well as cumulative impacts based on future strategic development of the basin.

Action 17	Implementation update
Management will update the PSD for the KEI Project to include links to various strategic information.	The PSD for the KEI Project has been updated.
PCM comments	The action item has been completed. PCM considers no further monitoring is required.

4.2.2 The Compliance Review Expert recommended that the EPS environmental and social governance capacity and management systems implementation should be upgraded.

Action 18	Implementation update
EBRD will publish a non-technical summary (NTS) of the work undertaken in 2015 in due course, along with a summary of the associated ESAP; monitoring of commitments under existing loans with EPS is ongoing.	The NTS was posted on both the EPS and EBRD websites (EBRD website ; EPS website). The version on the EPS website includes some updates on progress and schedule. Monitoring is ongoing, and the latest monitoring visit was in March 2016. Management requests that this action item be closed.
PCM comments	The action item has been completed. PCM considers no further monitoring is required. PCM takes note that monitoring of EPS' commitments under existing loans is ongoing and requests Management to provide PCM with information on developments.

Action 19	Implementation update
The 2012 action plans will be updated by EPS for subsidiaries by Q4 2015, and EPS will be requested to publish the summary report for these audits by Q1 2016.	The 2012 action plans have been updated and posted by EPS on the EPS website. Management requests that this action item be closed.
PCM comments	The action item has been completed. PCM considers no further monitoring is required.

4.2.3 The Compliance Review Expert recommended that EBRD review the environmental and social conditions affecting the mining communities within the basin, with outputs from this work publicly disclosed and consulted, and an appropriate action plan developed.

Action 20

Implementation update

EBRD will update the PSD for the KEI Project to include a summary of the social consultant's report on Vreoci (by end Q4 2015).

The PSD for the [KEI Project](#) has been updated to include this information.

PCM comments The action item has been completed. PCM considers no further monitoring is required.

Action 21

Implementation update

Management has committed to publicly disclose additional information and will continue to work with EPS in the areas of transparency and accountability. More clarity will be provided in PSDs on what EBRD is financing.

EBRD environmental staff conducted a monitoring visit in March 2016 and met with community and civil society organisations. The Bank has launched a technical cooperation project with the client on improving stakeholder engagement.

Management requests that this action item be closed.

PCM comments PCM takes note of the progress made on this action item and will continue to monitor implementation during the next monitoring period.

5. Conclusions and next steps

The PCM Officer has determined that Actions 1, 6, 7, 8, 10, 12, 13, 17, 18, 19 and 20 are completed and that no further monitoring is required. The PCM Officer will continue to monitor implementation of Actions 2, 3, 4, 5, 9, 11, 14, 15, 16 and 21.

The next Compliance Review Monitoring Report is expected to be issued in December 2016.