

EPS RESTRUCTURING PROJECT

REQUEST NUMBER: 2016/01

Compliance Review Monitoring Report I – February 2018

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 the Complaint on the EPS Restructuring Project in Serbia (the Project). Following a review of the Bank's compliance with its 2014 Public Information Policy (PIP) and the 2014 Environmental and Social Policy (ESP), the Compliance Review Expert made one finding of non-compliance in respect of the grounds set out in the Complaint. The Compliance Review determined that the Bank failed to comply with the implementing provisions of the 2014 PIP, in particular the Annex, section 2 (vi), as well as with its obligation under provision 15 of the 2014 ESP with respect to its commitment to stakeholder engagement, in particular by failing to ensure meaningful dialogue with stakeholders. 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 also sought the Complainant's comments on implementation of the Management Action Plan.

The PCM Officer takes note of the actions undertaken by Management to fulfil the commitments outlined in the Management Action Plan, and considers Actions 1a and 1c under this Complaint completed and will continue monitoring Actions 1b and 1d.

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

5. Introduction

This Compliance Review Monitoring Report is prepared pursuant to paragraph 47 of the 2014 Project Complaint Mechanism (PCM) Rules of Procedure. The PCM Officer is mandated to monitor the implementation of a Management Action Plan prepared in response to the findings and recommendations² contained in a Compliance Review Report. The PCM monitors the implementation of Management Action Plans and prepares Monitoring Reports at least biannually or until the PCM Officer determines that monitoring is no longer needed. Monitoring Reports are submitted to the President and Board, and then published in the PCM Register on the EBRD website.

The PCM reviewed a Complaint regarding the EBRD's financing of the restructuring plan for Elektroprivreda Srbije (EPS) in Serbia, completing the Compliance Review in June 2017. The Compliance Review Expert made one finding of non-compliance in respect of the grounds set out in the Complaint. The Compliance Review determined that the Bank failed to comply with the implementing provisions of the 2014 PIP, in particular Annex, section 2 (vi), as well as with its obligation under provision 15 of the 2014 ESP with respect to its commitment to stakeholder engagement, in particular by failing to ensure meaningful dialogue with stakeholders. 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 regarding the EPS Restructuring Project in Serbia.

² 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.

6. Context

The PCM received a complaint from CEE Bankwatch Network relating to EBRD's financing of the restructuring plan for Elektroprivreda Srbije in Serbia. The Complaint was registered by the PCM Officer on 23 February 2016 in accordance with paragraphs 11-13 of the PCM Rules of Procedure, and was subsequently posted in the PCM Register, pursuant to paragraph 20 of the PCM RPs. The Complainant requested a Compliance Review.

The Complaint alleged that the Bank has "*directly*" failed to comply with its Public Information Policy (PIP), in particular Section D, paragraph 3.2. It further alleges that, "*indirectly*", the Bank did not meet the standard expressed in paragraph 15 of the Environmental and Social Policy as well as the spirit, principles and ultimate goals on public disclosure and stakeholder engagement as provided for in the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

The PCM conducted an Eligibility Assessment of the Complaint based on the eligibility criteria in the PCM Rules of Procedure. The Eligibility Assessment Report for Compliance Review, released on 31 May 2016, concluded that the Complaint was eligible for a Compliance Review.

In June 2016, Andrea Saldarriaga was appointed as PCM Compliance Review Expert. The PCM Compliance Review included a review of public domain project information and EBRD internal documents. Meetings were held with EBRD environmental and social staff and the Complainant.

The Compliance Review Expert determined that, by disclosing the EPS Restructuring Board Report some 84 days after the request for information was filed, the Bank Management failed to comply with the implementing provisions of the 2014 PIP, in particular Annex, section 2 (vi) concerning response timeline. Also, the Compliance Review Expert determined that given the close relationship between the substantive commitments of the Bank and their realisation through the procedural provisions of the 2014 PIP, the inobservance of the implementing provisions of the 2014 PIP resulted – in this specific instance – in the non-compliance of the Bank with paragraph 15 of the 2014 ESP with respect to its commitment to stakeholder engagement, in particular by failing to ensure meaningful dialogue with stakeholders.

The PCM made recommendations relating to EBRD systems and procedures. 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. The Complainant submitted comments on the Management Action Plan. The final Compliance Review Report and Complainant's 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 Complainant's comments were publicly released on 26 June 2017.

7. Current monitoring period

The PCM Officer reviewed an implementation update on the Management Action Plan regarding the EPS Restructuring Complaint for the period June – December 2017, which was provided by EBRD Management to the PCM in mid-January 2018. The PCM Officer reviewed several specific documents provided by Management referenced in the implementation update, namely:

- [Public Information Policy Implementation Report 2016](#) published in Q1 2017;
- Guidance note on disclosure of Board reports for public sector Projects as part of the Banking Operations Manual;
- The informal IFI benchmarking exercise on disclosure of information.

The PCM Officer also invited the Complainant to provide comments regarding Management's implementation of the Management Action Plan that were considered in the preparation of this report. The next Compliance Review Monitoring Report is expected to be issued in August 2018.

8. 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 the observations regarding the implementation of the Actions of the Management Action Plan (MAP) concerning the EPS Restructuring 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.

In this first Monitoring Report, PCM took note of the actions taken by the Bank's Management including the development of the Guidance note on disclosure of Board reports for public sector Projects as part of the Banking Operations Manual. PCM also considered the [Public Information Policy Implementation Report 2016](#) published in Q1 2017. Further, the PCM reviewed the IFI benchmarking exercise on disclosure of information. Based on these considerations, the PCM considers Actions 1a and 1c under this Complaint completed.

Action 1a	Implementation update
<p>Bank Management will develop a guidance note on managing requests for public sector Board Reports in consultation with all relevant teams in the Bank, including ESD. It will include clarifying the timetable to respond and an oversight function to make sure timing requirements are met. The number of public sector Board reports requested and the number responded to within the timelines set out in the PIP will be included in the Annual PIP Implementation Report starting in 2017 (for calendar year 2016). The report is published online and this disclosure will allow external review of implementation, and identify the need for any further action. The guidance note will be finalised by Q2 2017.</p>	<p>The guidance note was developed involving all relevant Bank colleagues. Bankwatch were consulted on this complaint and guidance note and asked specifically the information that they are interested in when requesting a Board Report. This response is included in the guidance note. Other CSOs were approached at the Bank's Annual Meeting for input into the guidance note. Other IFIs were approached for peer review of the guidance note. The guidance note is part of the new Operations Manual on the Bank's new intranet. The number of public sector Board reports requested and the number responded to within the timelines set out in the PIP is included in the Annual PIP Implementation Report 2016 (published in March 2017) disclosed to shareholders and on the Bank's website. This information will be included in the PIP Implementation Report in future years.</p> <p>Bank Management recommends that this action is closed.</p>

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

Action 1b	Implementation update
<p>Bank Management will:</p> <p>Discuss issues with relevant stakeholders and take good international practice into account in preparing the internal guidance note, including benchmarking against similar practices in peer institutions (2017).</p>	<p>As mentioned above the guidance note takes on board advice from other IFIs as well as good international practice. The IFI benchmarking exercise was completed in autumn 2016 & again in autumn 2017. The EBRD website was enhanced to bring more visibility to the right to request a public sector Board report instead of this being visible by looking in the on-line version</p>

Enhance its website content to make the process of requesting public sector Board reports more accessible (2017).

Consider proactive disclosure of public sector Board reports in the forthcoming review of the Public Information Policy in 2018-2019 and will report on how these comments have been taken into account.

of the Policy. As a result of benchmarking against peer IFI institutions, proactive disclosure of public sector Board reports will be considered in the forthcoming review of the Public Information Policy. As standard practice, Bank management will report on the public consultation as part of the review process.

Bank Management recommends that this action is closed.

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

Action 1c

Implementation update

Responding to requests for public sector Board reports will become a key performance indicator in the annual PIP Implementation Report, beginning with the 2016 Implementation Report which will be published in 2017.

Results of implementation will be taken into account in the review of the Public Information Policy review scheduled for 2018-2019. Increasing the transparency of performance will assist stakeholders to make recommendations.

As mentioned above, responding to requests for public sector Board reports is a key part of the reporting on implementation of the PIP Implementation Report. See the below extract of the table that will be shown in the 2017 Public Information Policy Implementation Report:

Year	2012	2013	2014	2015	2016	2017
Requests per year	0	3	1	1	6	4
Met PIP timeline: up to 40 working days	N/A	3	1	0	6	4*

*3 requests were responded to within 20 working days, and 1 request was responded to within 40 working days.

The evidence from this reporting will be taken into account in the Public Information Policy review.

Bank Management recommends that this action is closed.

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

Action 1d

Implementation update

Bank Management will take note of the issues raised and addressed in this complaint for future revisions of the 2014 PIP in order to reinforce its procedures and make of them useful tools for implementing its commitments under the ESP.

This is noted for future policy revisions.

Bank Management recommends that this action is closed.

PCM comments: The PCM observes that this proposed action is vague and undefined, and the implementation update is non-specific. In future Management Action Plan implementation updates, the PCM encourages Bank Management to be more explicit on their plans, if any, in respect of how they will integrate lessons learned from this Complaint into policy/procedures development.

9. Conclusions and next steps

The PCM Officer takes note of the actions undertaken by Management to fulfil the commitments outlined in the Management Action Plan, and considers Actions 1a and 1c under this Complaint completed and will continue monitoring the Actions 1b and 1d. The next Compliance Review Monitoring Report is expected to be issued in August 2018.