

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

REQUEST NUMBER: 2013/03

**Compliance Review Monitoring Report II – February 2017**

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](http://www.ebrd.com).

#### Contact information

Inquiries should be addressed to:

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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 second Compliance Review Monitoring Report of the Project Complaint Mechanism (PCM) regarding two Complaints received from CEKOR local NGO 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.<sup>1</sup>

During this second 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 2, 3, 4, 5, 9 and 11 have been completed. The PCM Officer will continue to monitor implementation of Actions 14, 15, 16 and 21. The next monitoring report is expected to be issued in June-July 2017.

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<sup>1</sup> 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 Procedure<sup>2</sup> whereby, pursuant to a finding of non-compliance, the PCM Officer is mandated to monitor the implementation of the recommendations<sup>3</sup> 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 second Compliance Review Monitoring Report in respect of the two Complaints received on a number of EBRD-funded Projects with the Serbian state electrical company, EPS.

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

<sup>3</sup> 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.<sup>4</sup> 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 bridge the gap between the due diligence it undertook for the KEI Project, and the standard deemed appropriate by the Compliance Review Expert.

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<sup>4</sup> Refer to the [PCM Register](#) for more information.

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 April 2016-November 2016 period, which was provided by EBRD Management and is dated January 2017. 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:

- Guidance for Preparing the Environmental and Social Section in the Final Review Memorandum, the Board Document and the Project Summary Document, dated September 2016;
- EBRD Protocol for Assessment of Greenhouse Gas Emissions, dated August 2016;
- Terms of reference for Environmental and Sustainability Department Pre-Operations Committee, dated December 2016;
- Generic terms of reference for Environmental and Social Assessment for Category A projects, dated February 2017.

The PCM Officer also invited Complainants to provide their comments regarding the implementation of the Management Action Plan and took note of the written comments received from Complainants in relation with the updated of the MAP implementation by the Bank management.

In addition to comments specific to the monitored actions, the Complainants expressed the following general concerns regarding EPS despite ongoing support from EBRD:

- Concerns regarding EPS compliance with local legislation and standards.
- Concerns around supporting resettlement of inhabitants living in Veliki Crljeni village which houses and living conditions are impacted by mining operations. The need to develop a Resettlement Framework which will apply to all of its activities, including across the Kolubara mining basin.
- The request for a larger protective belt from mining operations in Kolubara and Kostolac mining regions. The current one is at 200m-300m, but the Complainants argue for the need of 500m protective belt. The protective belt would protect from vibration, noise, air pollution and also serve as a resettlement criterion.
- Extension of mining operations despite the allegations relating the lack of EIA, SEA and construction permits.
- Alleged limited information being disclosed by Serbian state electrical company in relation with its mining operation extension.



## 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 2	Implementation update
<p>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.</p>	<p>Guidance on this point has been included in the Assurance Framework and its implementation is reviewed as part of the Bank's project approval processes. Management request this item be closed.</p>
<p><b>PCM comments</b></p>	<p>PCM took note of the guidance note for Preparing the Environmental and Social Section in the Final Review Memorandum, the Board Document and the Project Summary Document produced by ESD and considers this action closed.</p>

Action 3	Implementation update
<p>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.</p>	<p>The 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 has been updated to include this. Management request this item be closed.</p>
<p><b>PCM comments</b></p>	<p>PCM took note of the guidance note for Preparing the Environmental and Social Section in the Final Review Memorandum, the Board Document and the Project Summary Document produced by ESD and considers this action closed.</p>

**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.

The Board of Directors' documentation contains a section on the Client, and ESD staff has been advised to review this section, as well as the project description, environmental and social sections of Board documentation. Guidance on this point has been included in the Assurance Framework and its implementation is reviewed as part of the Bank's project approval processes. Management request this item be closed.

**PCM comments**

PCM took note of the guidance note for Preparing the Environmental and Social Section in the Final Review Memorandum, the Board Document and the Project Summary Document produced by ESD and considers this action closed.

**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).

The 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 has been amended to include a summary of the broader socio-economic or environmental impacts resultant from a client's sectoral or regional approaches. The standard terms of reference for environmental and social appraisal included in the ESD assurance framework has also been amended to ensure that regional and sectoral approaches are appropriately considered in the environmental and social appraisal of all projects. Management request this item be closed.

**PCM comments**

PCM took note of the guidance note for Preparing the Environmental and Social Section in the Final Review Memorandum, the Board Document and the Project Summary Document produced by ESD and considers this action closed.

**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.

**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 management group in the Environmental and Sustainability Department have developed a terms of reference for their function. It specifically states that for each guidance document reviewed/approved, a decision will be made on whether it will be internal, external for information, or external for consultation. Guidance documents for external use are disclosed on the EBRD website. Comments are welcomed at any time on the guidance notes on the EBRD website and are reviewed when received, and may be revised to take account of the comments as

well as implementation lessons as appropriate. Many guidance notes are developed in working groups with specialised CSOs, institutes, and/or consultants (e.g., on biodiversity). Management request this item be closed.

**PCM comments**

PCM took note of the Terms of reference for Environmental and Sustainability Department Pre-Operations Committee produced by the Bank Management and the guidance notes published on the [EBRD website](#) and considers this action closed.

**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.

The requirement for a description of the scope of environmental and social appraisal has been included in the template for the environmental and social content of the Project Summary Documents. Its implementation is reviewed as part of the Bank's project approval processes. Management request this item be closed.

**PCM comments**

PCM took note of the guidance note for Preparing the Environmental and Social Section in the Final Review Memorandum, the Board Document and the Project Summary Document produced by ESD and considers this action closed.

**4.1.3 Greenhouse Gas (GHG) emissions analysis and guidance**

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

**Action 14**

**Implementation update**

EBRD guidance on GHG assessment will be updated and disclosed.

The updated guidance note on GHG assessment has been prepared. It is currently going through a process of internal review as part of the development of procedures for the Bank's Green Economy Transition initiative. The guidance will be published following management approval.

**PCM comments**

PCM took note of the updated EBRD Protocol for Assessment of Greenhouse Gas Emissions and will continue to monitor implementation of this action until it is publicly disclosed.

**Action 15**

**Implementation update**

The revised guidance, including relevant project screening criteria and guidance on defining the scope of the GHG assessment will be applied to all EBRD investments by Q2 2016.

The revised guidance has been completed and is being applied to all relevant investments. Management request this item be closed.

**PCM comments**

PCM took note of the updated EBRD Protocol for Assessment of Greenhouse Gas Emissions and will continue to monitor implementation of this action until it is publicly disclosed.

**Action 16**

**Implementation update**

Information on the scope and scale of project-

A requirement to include details of the GHG

specific GHG assessments will be disclosed in PSDs.

impact of projects, where this is greater than 25Kt CO<sub>2e</sub> per year, has been included in the template for the environmental and social content of PSDs. Monitoring the implementation of the reporting is being initiated and will be reported on in the Sustainability Report at the portfolio level. Management request this item be closed.

**PCM comments**

PCM took note of the Guidance for Preparing the Environmental and Social Section in the Final Review Memorandum, the Board Document and the Project Summary Document produced by the Management and will continue monitoring this action until more progress is done on disclosing information on the scope and scale of project-specific GHG assessments.

#### 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.

*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 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 consultants are working with the client on improving stakeholder engagement. The consultants are reviewing EPS current transparency and accountability mechanisms and will be making recommendations for improvement as necessary. Management request this item be closed.

**PCM comments**

PCM took note of the Bank progress on supporting the Client reviewing its existing stakeholder engagement policies and grievance mechanisms and will continue monitoring this action until the next monitoring period.

## **5. Conclusions and next steps**

The PCM Officer has determined that Actions 2, 3, 4, 5, 9 and 11 have been completed and that no further monitoring is required. The PCM Officer will continue to monitor implementation of Actions 14, 15, 16 and 21.

The next Compliance Review Monitoring Report is expected to be issued in June-July 2017.