

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

**PROJECT COMPLAINT MECHANISM
COMPLIANCE REVIEW MONITORING REPORT III
OMBLA HPP PROJECT, REQUEST NUMBER: 2011/06
September 2015**

Compliance Review Monitoring Report

This Compliance Review (CR) Monitoring Report is prepared pursuant to Rule 44 of the 2009 PCM Rules of Procedure (PCM RPs)¹ whereby, pursuant to a finding of non-compliance, the PCM Officer is mandated to monitor the implementation of the recommendations of the CR Report subject to the timetable and estimate of human and financial resources as set in the Management Action Plan (MAP).

PCM reviewed a Complaint about the EBRD's Ombla Hydroelectric Power Plant (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 CR Report included recommendations² to address the findings of non-compliance, in response to which the Bank's Management prepared a MAP in accordance with PCM RP 41. 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 PCM RP 42, and the Complainant's comments along with the CR Report and MAP were publicly released on 1 January 2014.

PCM monitors the implementation of recommendations of CR Reports and prepares Monitoring Reports at least biannually. This is the third Monitoring Report for the Ombla HPP Project. The Report has been prepared pursuant to the update on the MAP received from the Bank's Management in August 2015, and reflects the status of implementation at the time. The next Monitoring Report will be published around January 2016.

Summary

PCM has considered the following in preparation of this CR Monitoring Report:

- Revised Environmental and Social Procedures, approved in July 2015
- Updated internal *Staff Guidance Manual on implementing the 2014 Public Information Policy, dated November 2014*
- Updated internal *Guidance for Preparing the Environmental and Social Input to the Project Summary Document, dated January 2015*
- *Assurance Framework*, rolled out in 2Q 2015.

Based on the review of the above, monitoring of Recommendation 3 (see table below) will be closed, as no further monitoring is required.

Recommendations on developing operational procedures to clarify the circumstances under which environmental and social appraisal can be deferred until after Board approval or as a condition to disbursement of funds (Recommendations 1 and 2 in the table below) remain outstanding.

¹ The Complaint was registered, reviewed and will continue to be processed in accordance with the 2009 PCM RPs.

² Pursuant to PCM RP 40 a CR Report includes 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.

Management's update is presented in the table that follows, which also includes PCM's comments on the status of implementation.

Update by EBRD Management and implementation status

<p>PCM Recommendation 1</p> <p>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.</p>
<p>Management Response</p> <p>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.</p>
<p>Resources/Timetable</p> <p>No additional resources needed. Internal operational procedures will be refined in 2014, following Board approval of the revised ESP.</p>
<p>Management's Progress Report – July 2014</p> <p>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.</p>
<p>Management's Progress Report – January 2015</p> <p>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."</p> <p>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.</p>
<p>Management's Progress Report – August 2015</p> <p>An ESD Oversight Committee procedure is being developed to clarify the deferred appraisal circumstances and this is anticipated in 3Q 2015.</p> <p>More detailed internal processes are contained in the internal <i>Assurance Framework</i> - an internal management system which includes information on decision-making processes in projects and documentation of decisions. It was rolled out in 2Q 2015.</p> <p>The revised and updated Environmental and Social Procedures that accompany the revised Environmental and Social Policy (2014) were approved on 10 July 2015. The Procedures have been posted on the EBRD website.</p>
<p>PCM comments on implementation – September 2015</p> <p>PCM notes the publication of the revised Environmental and Social Procedures. Additionally, ESD staff will provide an overview of the <i>Assurance Framework</i> system to PCM.</p>

PCM Expert’s comments: It is universally accepted that ecological systems are especially vulnerable to adverse impacts, and that biodiversity damage is especially difficult to remediate. It is inconsistent with established practice in environmental governance to conflate the deferral of a biodiversity assessment with the deferral of other elements of environmental and social appraisal. Thus, legal frameworks for biodiversity protection commonly stipulate, in accordance with the precautionary approach/principle, that a biodiversity assessment must conclusively establish that such damage will not occur before approval of the project in question – see, for example Art. 6(3) EU Habitats Directive. Such concerns (and corresponding governance requirements) elevate the determinative role of a biodiversity assessment above that of other elements of environmental and social appraisal, such as ESIA, which merely serve to inform the decision-maker of the possible impacts. The refinement of the Bank’s internal operational procedures proposed above should clearly distinguish between the scope for deferral of a biodiversity assessment and deferral of other elements of environmental and social appraisal – notwithstanding the inclusion of the text in the 2014 ESP set out above.

PCM will continue monitoring this item pending the development of the ESD’s Oversight Committee procedure which will speak to the specifics of the deferred appraisal circumstances.

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.

Management's Progress Report – August 2015

An ESD Oversight Committee procedure is being developed to clarify the deferred appraisal circumstances and this is anticipated in 3Q 2015.

More detailed internal processes are contained in the internal *Assurance Framework* - an internal management system which includes information on decision-making processes in projects and documentation of decisions. It was rolled out in 2Q 2015.

The revised and updated Environmental and Social Procedures that accompany the revised Environmental and Social Policy (2014) were approved on 10 July 2015. The Procedures have been posted on the EBRD website.

PCM comments on implementation – September 2015

PCM notes the publication of the revised Environmental and Social Procedures. Additionally, ESD staff will provide an overview of the *Assurance Framework* to PCM.

PCM will continue monitoring this item pending the development of the ESD's Oversight Committee procedure which will speak to the specifics of the deferred appraisal circumstances.

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.

Management's Progress Report – August 2015

Guidance on preparing the environmental and social contents of PSDs were fulfilled in 2014, as was the PIP implementation guidance on PSD.

PCM comments on implementation – September 2015

PCM considered the guidance on updating PSDs in the internal *Staff Guidance Manual on implementing the 2014 Public Information Policy and EBRD Guidance for Preparing the Environmental and Social Input to the Project Summary Document* which point out that “any deferred appraisal (following Board or signing) must be disclosed in the PSD along with the rationale”.

These items will be closed as no further monitoring is required.