

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**PROJECT COMPLAINT MECHANISM  
COMPLIANCE REVIEW MONITORING REPORT IV  
BOSKOV MOST HYDRO POWER PROJECT, REQUEST NUMBER: 2011/05**

**March 2016**

## Compliance Review Monitoring Report

### *Context*

This Compliance Review (CR) Monitoring Report is prepared pursuant to Rule 44 of the 2009 PCM Rules of Procedure (PCM RPs)<sup>1</sup> 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 monitors the implementation of recommendations of CR 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 Boskov Most Hydro Power Project, 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 Complaints, namely in relation to Performance Requirement (PR) 6 of the EBRD's 2008 Environmental and Social Policy (ESP).

The CR Report included recommendations<sup>2</sup> 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.

This is the fourth Monitoring Report for the Boskov Most Project.

### *Current monitoring period – July-December 2015*

For the January-July 2015 monitoring period, the PCM Officer reviewed Management's Progress Report (prepared in July 2015) and reviewed several documents provided by Management, namely: (1) revised Environmental and Social Procedures, approved in July 2015; (2) updated internal Staff Guidance Manual on implementing the 2014 Public Information Policy, dated November 2014; and (3) updated internal Guidance for Preparing the Environmental and Social Input to the Project Summary Document, dated January 2015. The PCM Officer also noted views of the PCM Expert who prepared the Compliance Review Report. Based on the information reviewed, as Bank Management was continuing to implement the actions set forth in the MAP, no items were closed during this monitoring cycle.<sup>3</sup>

For the current monitoring period, the PCM Officer has reviewed Management's Progress Report on the implementation of the MAP (attached as Annex 1); has reviewed relevant documents prepared by Management and identified as addressing the recommendation of the Compliance Review Expert; and

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

<sup>2</sup> 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.

<sup>3</sup> Two earlier recommendations dealing with the exception for the imperative reasons of overriding public interest provided in the EU Habitats Directive were not adopted by Bank Management and have not been monitored by PCM.

has been familiarised with the internal management system – called the Assurance Framework – of the Bank’s Environmental Sustainability Department (ESD).

A key development in relation to the Boskov Most Project, as reported in Management’s Progress Report, is the decision of the Bank to accept recommendations made by the Bern Convention Standing Committee relating to the Mavrovo National Park, and to not take any further activities on the Project until the Government of FYR Macedonia has implemented the Bern Convention recommendations. PCM monitoring takes into account the absence of further implementation of the Project.<sup>4</sup>

PCM has also considered the Complainant’s comments, including information on the status of the Project as well as their views on the Management’s Progress Report. A key point expressed by the Complainant is that the EBRD should cancel the Boskov Most Project. Further, the Complainant expressed concerns about the PCM monitoring process, “which focuses on recommendations that were formalised several years ago and currently carry little relevance for the adequate protection of the Mavrovo National Park, in line with the EU and international environmental law. We believe that, instead of focusing on Management’s implementation of the MAP, the PCM should be taking an independent view of the acceptability of the Bank’s continued processing of the project.”<sup>5</sup>

The Complainant asserts that the EBRD, rather than following the recommendations to FYR Macedonia under the Bern Convention, should accept the findings of the independent expert panel contained in the report issued pursuant to the on-the-spot appraisal mandated by the Standing Committee. And, given that the Bank has not so done, the Complainant believes PCM should give due consideration to the findings of the independent expert panel during the PCM monitoring process.

The Complainant asserts that, because of the panel’s findings, recommendations 4 and 5 of the PCM CR Report on the Boskov Most Project could never be meaningfully implemented. In regards to recommendation 4, the Complainant highlights the following point made in the report to the Standing Committee:

[F]ollowing the precautionary principle, the [Boskov Most] project as currently designed must be abandoned until the conservation status of the Balkan lynx population is brought back to a safe level and until when the Mavrovo National Park is no longer the only known core area of reproduction of this species. This conclusion for the Balkan lynx does not prejudice any other conclusions concerning the ecological integrity of the project sites with respect to other biological and hydro morphological features, for the protection of which the national park has been designated.

The Complainant cites additional conclusions of the report, including that the effects and the severity of impacts of the construction of the two large and 22 small hydropower projects on the populations and ecology of many other important species is still not assessed, and further: “In the present case, the construction plans for the dams would have unacceptable impacts due to their interference in the aquatic ecosystems in more or less the total area, regardless of their size.”

Linked to recommendation 5 of the PCM CR Report, the Complainant noted the following assessment of the independent expert panel:

Obviously, there is an important contradiction between the general intention regarding the protection of the Mavrovo [National Park] as expressed in the Law and some provisions in the

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<sup>4</sup> This information was disclosed on the EBRD website on 9 December 2015, available at <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395248118146&pagename=EBRD%2FContent%2FContentLayout&rendermode=preview%3Fsrch-pg%3Fsrch-pg%3Dadv>.

<sup>5</sup> The PCM Officer has responded to the Complainant’s concerns regarding the monitoring process separately.

management regime and their application....[I]t appears already quite clearly that the extension and the expected impacts of the HPP in the Park would affect several species and habitat identified of European significance; thus these construction projects would be in contradiction with the general objective [of the Park].

The Complainant also reiterates the view of the independent expert panel that “the precautionary principle should be applied and the projects as they are presented should not be permitted nor financed by international financial institutions.”

In light of information received to date, and in accordance with the scope of the PCM Officer’s monitoring role, the PCM Officer has determined the following:

<p><b>Recommendation 1:</b> Development of detailed guidance on the minimum requirements for the preparation of biodiversity assessments for projects likely to have a significant effect on natural, critical or protected habitats....</p>	<p>PCM notes the piloting of a guidance note on PR 6. PCM will continue monitoring this item pending PCM review of the guidance note once available.</p>
<p><b>Recommendation 2:</b> Practical guidance on the scope of the very limited flexibility as regards the exhaustiveness of such a biodiversity assessment likely to be acceptable for the approval of a Project under the so-called “D1 exception”.</p>	<p>PCM has reviewed the internal guidance clarifying the approach to deferred appraisal, part of ESD’s Assurance Framework. This guidance satisfies the commitment Bank Management made in the MAP. Bank Management also committed to developing internal procedures regarding information to be provided to the Board. This commitment is also captured in the scope of recommendation 3 and will be reviewed in that context accordingly.</p> <p>No further monitoring of this item will be necessary.</p>
<p><b>Recommendation 3:</b> Where the so-called “D1 exception” is employed, fully transparent procedures for decision-making on disbursement of funds subject to subsequent satisfaction of contractual conditions relating to further biodiversity assessment.</p>	<p>PCM will continue monitoring this item pending a review of the internal procedures, which are to include the environmental and social information to be provided to the Board of Directors.</p>
<p><b>Recommendation 4:</b> ...[T]he mitigation measures identified in the ESAP, and any further measures arising under the due process of national law, are rigorously implemented....</p>	<p>PCM notes the current circumstances regarding the Bank’s decision in light of the Bern Convention recommendation as well as the serious concerns raised by the Complainant. PCM will continue monitoring this item as circumstances relating to Project implementation evolve.</p>
<p><b>Recommendation 5:</b> In ensuring implementation of the mitigation measures stipulated in the ESAP, the Bank should have regard to the outcome of the ongoing revalorization of the Mavrovo National Park by the Ministry of Environment and Physical Planning and any new or additional management goals established thereby.</p>	<p>PCM takes note of the discussions Management has had with the relevant authorities as well as the serious concerns raised by the Complainant. PCM will continue to monitor this item as circumstances relating to Project implementation evolve.</p>

The next Monitoring Report will be issued in August/September 2016.

## ANNEX 1: Management's Progress Reports

Management provides biannual updates to their progress in implementing the MAP. Management's updates on CR recommendations are contained in the table, below.

<p><b>PCM Recommendation 1</b></p> <p><b>Development of detailed guidance on the minimum requirements for the preparation of biodiversity assessments for projects likely to have a significant effect on natural, critical or protected habitats, providing, <i>inter alia</i>:</b></p> <ol style="list-style-type: none"><li><b>a. Best practice regarding the setting out of conclusive and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed Project on the integrity of the site concerned.</b></li><li><b>b. Best practice regarding the preparation and reporting of a biodiversity assessment separately from the general ESIA or in a manner clearly identified and distinguishable within the ESIA.</b></li></ol>
<p><b>Management Response</b></p> <p>Management believes that there are many good sources of guidance currently available on biodiversity assessment which collectively cover and define best practices that the Bank can rely on. These include guidance on both the setting out of conclusive and definitive findings and conclusions as well as the preparation and reporting of a biodiversity assessment, for example in accordance with the EU Environmental Impact Assessment Directive and Habitats Directive.</p> <p>Management proposes that the Environment and Sustainability Department (ESD) will review such guidance during the on-going review of the ESP, including Performance Requirement 6, and identify appropriate guidance that will be made available and applied to relevant assessments.</p>
<p><b>Resources/Timetable</b></p> <p>No additional resources needed. Identification of appropriate guidance in 2014, following Board approval of the revised ESP.</p>
<p><b>Management's Progress Report – July 2014</b></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. A guidance note for PR6 will be prepared with the help of independent biodiversity experts. The ToR has been prepared and the guidance note is expected to be completed by the year end.</p>
<p><b>Management's Progress Report – January 2015</b></p> <p>A guidance note for the PR6 is currently being finalised with an independent consultant. It will clarify how the relevant EU directives are interpreted for the purposes of undertaking biodiversity assessments under PR 6 and provide guidance on biodiversity assessment that is to be carried out in accordance with EU Habitat Directive and associated guidance when a project could have a significant impact on the conservation objectives or integrity of a protected area comparable to a Natura 2000 site. The GN will be rolled out in the first half of 2015 to Bank staff and our clients. This will be accompanied by internal training for ESD.</p> <p>The final GN will be disclosed on the EBRD website.</p>
<p><b>Management's Progress Report – August 2015</b></p> <p>Two guidance notes on biodiversity were finalised in June 2015 by the <i>MFI Working Group on</i></p>

*Biodiversity* in which EBRD participated, playing a leading role on the guidance on baseline information. These guidance notes have been posted on the EBRD website:

Good Practice Guidelines on the Collection of Biodiversity Baseline Data

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395245538876&pagename=EBRD%2FContent%2FDownloadDocument>

Good Practices for Biodiversity Inclusive Impact Assessment and Management Planning.

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395245539075&pagename=EBRD%2FContent%2FDownloadDocument>

A guidance note specific to EBRD's PR6 is in draft form and will be piloted later in 2015. The final guidance note will be disclosed on the EBRD website.

#### **Management's Progress Report – January 2016**

A guidance note on EBRD PR6 has been developed and is currently being piloted internally.

In mid 2016, the guidance note will be reviewed, taking the pilot information into account and the final guidance note will be put on the EBRD website.

Internal training and information sessions are ongoing.

We request this issue be closed.

#### **PCM Recommendation 2**

**Practical guidance on the scope of the very limited flexibility as regards the exhaustiveness of such a biodiversity assessment likely to be acceptable for the approval of a Project under the so-called "D1 exception".**

#### **Management Response**

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 obligation placed on the borrower are included in the financing agreements, including the Environmental and Social Action Plan. 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.

#### **Resources/Timetable**

No additional resources needed. Internal operational procedures will be refined 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 following text has been 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.”

The revised and updated Environmental and Social Procedures are pending management review and will be finalised in 2Q 2015.

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.

#### **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 *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.

#### **Management’s Progress Report – January 2016**

A memo has been approved by the ESD management to clarify the deferred appraisal approach and circumstances and this has been included in the Assurance Framework. We request this issue be closed.

#### **PCM Recommendation 3**

**Where the so-called “D1 exception” is employed, fully transparent procedures for decision-making on disbursement of funds subject to subsequent satisfaction of contractual conditions relating to further biodiversity assessment.**

#### **Management Response**

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, 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;
- 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; and
- 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](http://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. Internal ESD guidance notes on the preparation of the environmental and social sections of PSDs will be updated to reflect this commitment.

**Resources/Timetable**

No additional resources needed. Internal operational procedures and 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 now being revised.

The 2014 ESP includes article 41, which clarifies that the Board is able to agree some elements of appraisal post- Board, and this will be reflected in guidance:

“41. 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. Where a project has been approved subject to such conditions, the Project Summary Document will include a description of the approach.”

In addition, 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.

**Management's Progress Report – January 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.
- ESD's internal guidance note for preparing environmental and social information for the Board document will be updated in the first half of 2015 to include information on conditions relating to further environmental and social appraisal as a condition of disbursement.
- 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**

- ESD's internal guidance note for preparing environmental and social information for the Board document will be prepared in 3Q 2015.
- An ESD Oversight Committee procedure is being developed to clarify the decision-making process of disbursement of funds subject to satisfaction of contractual condition relating to further biodiversity assessment, and this is anticipated in 3Q 2015.
- The revised and updated Environmental and Social Procedures were approved on 10 July 2015 and have been posted on the EBRD website.

**Management's Progress Report – January 2015**

- Previous commitments were completed in the last progress report.
- An internal ESD guidance note on environmental and social information for the Board document has been approved and incorporated in the Assurance Framework.
- A guidance note on deferred appraisal includes requirements for documenting decision-making.

**PCM Recommendation 4**

**Though the Compliance Review Expert has concluded that the Bank was not in full compliance with the ESP as regards the assessment of the biodiversity impacts of the present Project, it is only necessary in the present case to recommend that the mitigation measures identified in the ESAP, and any further measures arising under the due process of national law, are rigorously implemented. The reasonably comprehensive desk-based studies undertaken and the complete suite of mitigation measures stipulated ought to be sufficient to ensure the effective application of the requisite standards of protection of biodiversity resources in the present case.**

**Management Response**

Management considers that the preparation of a satisfactory biodiversity study was appropriately established in this project as a condition precedent for disbursements under the EBRD loan. The results of the Environmental and Social Action Plan (ESAP)-required additional bio-monitoring programme have been disclosed and discussed with relevant CSOs. The four seasons' bio-monitoring was required to verify earlier conclusions contained in the Environmental and Social Impact Assessment (ESIA) regarding the project's limited and temporary impacts on biodiversity, and to strengthen mitigation measures, if needed. To satisfy the Bank's conditions precedent for disbursement and ensure effective protection of biodiversity resources, all necessary refinements to the project design and mitigation measures taking into consideration sound scientific advice from the CSOs will be introduced to address the findings and conclusions of the additional bio-monitoring programme.

**Resources/Timetable**

No additional action or resources needed. Current commitment in project documentation.

Resources include normal monitoring resources for Bank staff to review outputs of bio-monitoring and measures to address its findings, undertake site visits and monitor project reporting.

**Management's Progress Report – July 2014**

The condition precedent (CP) has not yet been satisfied. The project implementation has been delayed due to a number of factors including delays encountered in the tendering and procurement process. EBRD and ELEM will continue liaising with IUCN network and other biodiversity experts to take into consideration sound scientific advice from the CSOs to finalise the biodiversity assessment and mitigation and monitoring plans.

**Management's Progress Report – January 2015**

The project implementation has been delayed due to a number of factors including delays encountered in the tendering and procurement process and no disbursement of EBRD loan has taken place to date.

To date, ELEM has undertaken an additional Biodiversity Survey of the project area. The additional Biodiversity Survey report is being amended and finalised by ELEM and its external experts to address the comments received from CSOs and IUCN expert network organisations and satisfy the Bank's requirements. A number of further hydrology and biodiversity studies as well as further consultation meetings with the CSOs and other interested parties regarding these studies are required to be completed before the disbursement of the loan and/or start of construction.

#### **Management's Progress Report – August 2015**

No disbursement of the loan has been made to date. There has been progress with some of the additional studies. Further revision of studies and consultation meetings with the CSOs and other interested parties regarding these studies are planned.

In addition to the EBRD requirements on the project and biodiversity, it is important to note that FYR Macedonia ratified the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) in 1999; this project, together with other planned hydropower projects in the Mavrovo National Park will be subject to its requirements.

[http://www.coe.int/t/dg4/cultureheritage/nature/bern/default\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/bern/default_en.asp)

The EBRD continues to monitor the project and will review the results of the appraisal by the independent expert panel, which are expected in late 2015, before continuing further preparations of the project.

#### **Management's Progress Report – January 2016**

Following an “on-the-spot” appraisal of all planned hydropower developments in the territory of the Mavrovo National Park in June 2015, the Standing Committee of the Bern Convention on the Conservation of European Wildlife and Natural Habitats adopted a recommendation to the Government of FYR Macedonia to suspend the implementation of all planned development projects in the protected area, in particular the proposed hydropower plants, until a Strategic Environmental Assessment of cumulative effects of all planned development activities on the territory of the Mavrovo National Park has been completed. Following detailed consultation with ELEM and relevant authorities in FYR Macedonia, EBRD fully accepts of recommendations of the Bern Convention Standing Committee relating to the Mavrovo National Park, and accordingly, EBRD is not taking any further activities on Boskov Most HPP project until the Government of FYR Macedonia has implemented the Bern Convention recommendations. No disbursement has been made to date.

#### **PCM Recommendation 5**

**In ensuring implementation of the mitigation measures stipulated in the ESAP, the Bank should have regard to the outcome of the ongoing revalorization of the Mavrovo National Park by the Ministry of Environment and Physical Planning and any new or additional management goals established thereby.**

#### **Management Response**

Management continues to monitor the Park's planning process closely. The revalorisation process has been completed, with no change to the previous “sustainable use” zoning of the area to be affected by the HPP; “sustainable use” is considered to include hydropower development. A draft Management Plan has also been completed and disclosed by authorities; on-going monitoring shows that the HPP project does not conflict in any way with draft plans, nor would construction and operation of the HPP.

EBRD will continue to monitor the Mavrovo National Park revalorisation, zoning and management

planning, and take the necessary actions to amend the project ESAP, mitigation measures and the project monitoring programme, as needed.

**Resources/Timetable**

No additional action or resources needed. Included in normal monitoring of this type of a project.

**Management's Progress Report – July 2014**

EBRD met with the Mavrovo NP management in May 2014 to clarify the current status of the revalorisation process and reviewed the finalised studies and proposals that are currently being considered by FYR Macedonian parliament. The outcomes of the revalorisation studies have also been taken into consideration in the annual pre-construction Biodiversity Survey, which has proposed additional mitigation measures.

**Management's Progress Report – January 2015**

EBRD met with the Mavrovo NP management and the Ministry of Environment and Physical Planning in September 2014 to clarify the status of the revalorisation process. ELEM and EBRD will remain in close communication with the National Park authorities to take into consideration any relevant new or additional management goals for the Mavrovo NP in the project.

**Management's Progress Report – August 2015**

EBRD met with the Mavrovo NP management in May 2015 and with the Ministry of Environment and Physical Planning in June 2015 to clarify the status of the approval of a new management plan for the national park. The process remains unfinished and the new park management plan has not yet been approved.

**Management's Progress Report – January 2016**

EBRD met with the Mavrovo NP management and the Ministry of Environment and Physical Planning in May and June 2015 and received an update on the status of the ongoing revalorisation process.