

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

**PROJECT COMPLAINT MECHANISM
COMPLIANCE REVIEW MONITORING REPORT IV
OMBLA HPP PROJECT, REQUEST NUMBER: 2011/06
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)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 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 a Complaint about the EBRD's Ombla 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.

This is the fourth Monitoring Report for the Ombla HPP 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 views of a PCM Expert on Management's Progress Report were also noted. Based on the information reviewed, the PCM Officer concluded that recommendation 1 on guidance for deferred appraisal, and recommendation 2 on procedures for decision-making on disbursement of funds in cases of deferred appraisal would remain under PCM monitoring, as Bank Management's implementation of these actions remained ongoing. In regards to recommendation 3 on procedures to ensure transparency in cases of deferred appraisal, the PCM Officer concluded that no further monitoring was necessary, as Bank Management had met its stated commitment in the MAP.³

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

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.

³ One additional recommendation for the development of a scheme for monitoring whether the requirements of the ESAP, and Performance Requirement (PR) 6 to the extent possible, before disbursement of funds takes place, was not adopted by Bank Management. Therefore, this recommendation has not been monitored by PCM.

Management and identified as addressing the recommendation of the Compliance Review Expert; and has been familiarised with the internal management system (called the Assurance Framework) of the Bank's Environmental Sustainability Department (ESD). No comments were received from the Complainant during this monitoring cycle.

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>Recommendation 1: 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>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 2 and will be reviewed in that context accordingly.</p> <p>No further monitoring of this item will be necessary.</p>
<p>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.</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>

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 not yet closed by PCM are contained in the table, below.

PCM Recommendation 1
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.
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 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.
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 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.
Management's Progress Report – January 2015 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." 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 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. 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 it has been included in the Assurance Framework. We request this issue be closed.

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.

Management's Progress Report – January 2016

Internal procedures have been prepared which include the documentation of decision-making and responsibility for the approving disbursement conditions subject to satisfactory further E&S appraisal.

An internal guidance note which includes the environmental and social information to be provided to the Board of Directors has been developed and is now part of the Assurance Framework.